



केंद्रीय कर, केन्द्रीय उत्पाद शुल्क व सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX

सिकंदराबाद आयुक्तालय

SECUNDERABAD COMMISSIONERATE

जी एस टी भवन, एलबीस्टेडियमरोड, बशीरबाग, हैदराबाद-500004

GST BHAVAN, L.B.STADIUM ROAD, BASHEER BAGH, HYDERABAD-500 004

Email: adjudication3@gmail.com

O.R.No.64/2018-19-GST-Sec-Adjn-JC(ST) (De novo)

Date:26.07.2021

ORDER (DE NOVO) NO: 05 / 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. (De novo)]

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 ह्याह संशोधितसेडुप्रभावितहो. इसप्रकार प्राप्तआदेशनिर्णय केखिलाफआदेशकी प्राप्तिके 60 दिन के भीतरआयुक्त ह्य अपीलह 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 ह्याह 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 विरुद्ध अपील की जा रही हो। उसकी एक प्रति भी संलग्न की जानी चाहिए।

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

5. अपील और जिसने निर्णय या आदेश के विरुद्ध 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 - Non-payment of Service Tax by M/s. Greenwood Estates, Secunderabad for the period January 2010 to December 2011- Issue of Orders (De novo) – Regarding.

BREIF FACTS OF THE CASE:

This Order (De novo) is being passed in compliance to the Order-in-Appeal No.Hyd-Excus-SC-AP2-0025-18-19-20-ST, dated 27.04.2018 passed by the Commissioner (Appeals-II), Hyderabad.

2. M/s Greenwood Estates, 5-4-187/384, II Floor, Soham Mansion, MG Road, Secunderabad-500003 (hereinafter referred to as the assessee are engaged in providing Works Contract Service. The assessee are a registered

partnership firm and got themselves registered with the Department vide Service Tax Registration bearing No. AAHFG0711BST001.

3.1. A Show Cause Notice vide HQPOR No.77/2010-Adjn(ST) dt.21.05.2010 was issued for the period January, 2009 to December, 2009 involving an amount of Rs.9,47,737/- and the same has been adjudicated and confirmed vide Order-In-Original No.47/2010-ST, dt.24.11.2010. Aggrieved by order, the assessee have gone in appeal and the same has been dismissed by the Commissioner (Appeals) vide Order-In-Appeal No.11/2011-S.Tax dt.31.01.2011. The present issue is in sequel to the same for the periods January, 2010 to December, 2010 and January, 2011 to December, 2011.

3.2. Two periodical Show Cause Notices covering the periods January, 2010 to December, 2010 and January, 2011 to December, 2011 have been issued to the assessee as detailed below:

Show Cause Notice number and date	Amount of S.Tax demanded in the Show Cause Notice	Period covered in the Show Cause Notice
O.R.No.61/2011-ADJ-ST-GRX dt 23.04 2011	Rs. 48,00,391/-	January, 2010 to December, 2010
O.R.No.52/2012-ADJ-ST	Rs.46,81,850/-	January, 2011 to December, 2011

3.3. Both the above Show Cause Notices were adjudicated by the Additional Commissioner, Hyderabad-II Commissionerate vide a common Order-In-Original No.51/2012-Adjn(ST)ADC, dt 31.08.2012. In respect of Show Cause Notice No.O.R.No.61/2011 dt.23.04.2011, the adjudicating authority confirmed the demand of S.Tax of Rs.48,00,391/- along with interest and imposed penalty of Rs.200/-per day or 2% of such Service Tax per month whichever is higher under Section 76 of Finance Act, 1994 and imposed penalty of Rs 1000/- under Section 77 of Finance Act, 1994. In respect of Show Cause Notice O.R.No.52/2012-ADJ-ST. dt.24.04.2012, the adjudicating authority confirmed the demand of S.Tax of Rs.46,81,850/-

along with interest and imposed penalty of Rs.200/ per day or 2% of such Service Tax per month whichever is higher under Section 76 of Finance Act, 1994, and imposed penalty of Rs.1000/- under Section 77 of Finance Act, 1994,

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

3.5. Aggrieved by the above said Order-In-Appeal No. No.39/2013(H-II)S Tax dt 27.02.2013, the assessee preferred an appeal before the Hon'ble Tribunal.

The Hon'ble Tribunal vide Final Order No.20401/2014 in ST/Stay/27332/2013 in ST/27017/2013 DB dt.25.03.2014 observed-

"It was submitted by both sides that the issue is not only re quantification but also verification of certain facts and aspects of law which have already been confirmed by the Commissioner(appeals). Instead of going into this issue which will result in a decision on part of the appeal, we consider it appropriate that the litigation should be merged into one rather than having two separate parallel litigations going on. Therefore, it was submitted that the matter may be remanded to the original adjudicating authority and he may be directed to decide all the issues in respect of both the show cause notices and also undertake re-quantification as directed by Commissioner(appeals). We find the submission to be reasonable. At the same time, since the observations of Commissioner(Appeals) and conclusions have not been accepted and appeals have been filed, it would not be appropriate for us to remand the matter without allowing the appellant to present their case once again on the aspects which have been concluded by the Commissioner(Appeals). Therefore, while remanding the matter after setting aside the impugned order, we direct the original adjudicating authority to consider all the issues afresh and pass a well-reasoned order. As far as re quantification is concerned wherever there is no dispute, re-quantification can be done as directed by Commissioner(Appeals). Wherever there are disputes, the matter can be decided by the adjudicating authority, by passing a well reasoned and detailed order. It is made clear that the amounts already deposited need not be refunded just because the impugned order has been set aside till the issue is decided.

3.6. The Adjudicating Authority vide Order-In-Original No.83/2016-Adjn(ST)(ADC)dt 09.06.2017 in the de novo proceedings arising from the remand ordered by the Tribunal as well as Commissioner (Appeals) forum, heard the appellant and passed the de novo adjudication order Impugned herein, holding that the appellant was liable to pay tax on the construction of residential complex service, Regarding the quantification of the service tax demand for which the remand was made by the Commissioner (Appeals), it was held that the appellant had not submitted the amounts received supported by any documentary evidence and hence the figures mentioned in their submissions dated 22.12.2015 (Para 4.8 of the OIO Impugned herein] were not acceptable; that the figures submitted by the appellant to the various fora were also inconsistent as detailed in the impugned order. The demand was confirmed in respect of the two notices dated 23.04.2011 & 24.04.2012.

3.7. Aggrieved by the Order-In-Original No.83/2016-Adjn(ST)(ADC), dt 09.06.2017, the assessee filed an appeal before the Commissioner(Appeals), Hyderabad. The Commissioner (Appeals), Hyderabad vide para 12 of Order-in-Appeal No. Hyd-Excus-SC-AP2-0025-18-19-ST dated 27.04.2018 had remanded the case to original authority. The order portion at Para 12 reads as follows:

“12. In view of the discussions recorded above, para 5(a)(i) and 5(b)(i) of the impugned order is set aside and remanded to the Adjudicating Authority who is directed to:

- (a) Examine the evidence presented in the CD regarding the appellant's residential unit-wise liability under the composition scheme;*
- (b) The elements of VAT (if any), and value of goods whose title stands transferred as sale alone is excludible, the same may be excluded,*
- (c) Registration charges / stamp duty are not excluded in the composition scheme, hence includible for assessment to WCS; it is expressly clarified that land is not “goods” for the purpose of the Composition Scheme, and the land value mentioned in the sale deed is includible for assessment under the composition scheme;*
- (d) There is force in the contention that electricity/water charges are collected and paid to the utilities for the corresponding services; that the same represent reimbursable expenses out of ambit of the levy, as settled by the Apex Court in UNION OF INDIA Versus INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD. (2018 (10) G.S.T.L. 401 (S.C.); therefore I hold that the same shall be excluded for assessment to tax; and that cum-tax benefit shall be extended under Sec 67(2) on the values included from the sale deed.*
- (e) Interest, a quintessential liability accompanying belated payment of tax, is to be computed on such modified tax liability arrived at supra. **Para 5(a)(ii) and 5(b)(ii) of the impugned order stands modified accordingly,***
- (f) Penalty under Sec 76 has been adjudged on 09.06.2017, and the penal provision as amended on 14.05.2015 shall apply, as mandated by Sec 788. Therefore, Para 5(a)(ii) and 5(b)(iii) of the impugned order stand modified to the effect that the quantum of penalty under Sec 76 in each notice is restricted to 10% of the tax liability computed in the de novo proceedings in compliance with this remand.*

3.8 In view of the directions of the Commissioner(Appeals) order dt 27.04.2018 remanding the matter, the matter is taken up for *de novo* adjudication.

ASSESSEES' REPLY & PERSONAL HEARING:

4.1. Shri. P. Venkata Prasad, Chartered Accountant and Shri. Mangipelli Jayaprakash, Sr. Manager - Finance & Accounts has appeared for personal hearing on 18.06.2021 on behalf of the assessee, and submitted the following written submissions vide their letter dt. 29.06.2021 :-

4.2 The assessee at the outset has contested the demand of service tax and other aspects in the above referred OIA dated 27.04.2018 *inter alia* that

- a. There is no service tax liability on the builder during the period prior to 01.07.2010;
- b. The 'sale deed' value should be excluded while arriving the taxable value;
- c. Amount received towards registration charges, stamp duty etc., should be excluded while arriving the taxable value;

Accordingly, the assessee has filed an appeal before Hon'ble CESTAT, Hyderabad vide appeal No. ST/31034/2018 which is pending for disposal. As the same OIA is already appealed before the Hon'ble Tribunal, the assessee requested the Ld. Adjudicating authority to keep the proceedings in abeyance till the disposal of appeal by Hon'ble CESTAT, Hyderabad.

4.3. The assessee has relied up on the following case law in this regard

- a. Vilsons Roofing Products Pvt Ltd Vs CCE, Kolhapur 2013-TIOL-2023-CESTAT-MUM wherein it was held that "4. Brief facts of the case are that the appellants filed a refund claim before the adjudicating authority which was sanctioned and the refund was given to the appellants. Against the said order, the Revenue preferred

an appeal before the Commissioner (Appeals) who set aside the order of sanctioning the refund claim and remanded the matter back to the adjudicating authority for reconsideration. The said order was challenged by the appellants before the Tribunal on the ground that the Commissioner (Appeals) has no power to remand the matter to the adjudicating authority and obtained stay from the Tribunal. While the matter is pending before the Tribunal, the adjudicating authority, on the matter on remand by the Commissioner (Appeals), has rejected the refund claim of the appellants. On appeal before the Commissioner (Appeals) the rejection was upheld. Aggrieved by the said order the appellants are before me.

5. When the issue before this Tribunal is sub judice therefore, the remand proceeding was not warranted. Hence, the impugned order passed by the adjudicating authority has no legal sanctity. Accordingly, the impugned order is set aside and the appeals are allowed. The stay applications are also disposed of in the above terms."

- b. Agro Tech Foods Pvt. Ltd. Vs CC(I), Nhavasheva 2017 (345) ELT 668 (Tri-Mum)
- c. Fiberfill Engineers Vs CCE, Delhi 2016 (332) ELT 478 (Del)
- d. P K International Vs CCE, Thane-II 2014 (301) ELT 3 (Bom)
- e. CC, Uttar Pradesh Vs Pidilite Industries Limited 2014 (309) ELT 598 (All)

4.4 The assessee has stated that without prejudice to the above, in case the Adjudicating authority wishes to proceed for *de novo* adjudication, the assessee wishes to make the following submissions. In this regard, the assessee submitted that the submissions are only made for deciding the issues in the subject remand directions and not in substitution of the grounds pleaded before the Hon'ble CESTAT, Hyderabad.

4.5 The assessee stated that they have submitted the statement of Residential unit wise liability in accordance with the remand directions

given in the OIA, and stated that however since they have not collected any service tax from the customers, in case the demand stands confirmed, the assessee requested for re-quantification of the same after allowing the benefit of cum-tax u/s. 67(2) of Finance Act, 1994 *ibid*. The liability statement submitted after considering the cum-tax benefit is as under:

Particulars	Jan'10 to Dec'10	Jan'11 to Dec'11	Total
Gross Receipts	10,64,62,565	10,86,65,257	21,51,27,822
Less: Deductions			
VAT	15,20,860	14,17,634	29,38,494
Other Non Taxable Receipts - (Electricity and Water Charges)	43,27,640	37,03,582	80,31,222
Taxable value	10,06,14,065	10,35,44,041	20,41,58,106
Net Taxable Value after considering Cum-tax benefit	9,66,32,794	9,94,46,832	19,60,79,625
Tax Amount @ 4.12%	39,81,271	40,97,209	80,78,481
Actually Paid	24,69,553	23,11,233	47,80,786
Short/(Excess) Paid	15,11,718	17,85,976	32,97,695

4.6 The assessee also submitted that the above calculation is purely based on the directions given by the Order-in-Appeal and the same is appealed before CESTAT and pending for disposal and submitted that the above calculation shall not be treated as admitting the liability by them. The assessee also stated that since electricity and water charges are collected and paid to the utilities for corresponding services and are in the nature of re-imbursements, the same shall be excluded for assessment of tax, as held by the OIA in its Para 12(d).

4.7 Another Personal hearing was held on 20.07.2021 at 13.00 hours seeking clarification on the quantification submitted by the assessee. The representative explained the various documents submitted for the purpose of quantification. In this regard the adjudication Section wrote to the Anti evasion Section at Headquarter vide File OR.No. 64/2018-19-Sec-Adjn-JC(ST) (De novo) dated 19.07.2021 seeking examination of the documents

and quantify the amounts as per the directions of Commissioner (Appeals). The said section vide letter C.No. HQAE/V/110/2021-Sec-Misc., dated 23.07.2021 submitted their reply and the same is reproduced below:

(i) "Adjudication Section has given the following documents (soft copies) pertaining to M/s Greenwood Estates;

- I.T Returns along with Balance Sheets & Profit & Loss Statement for the Assessment Years 2010-11, 2011-12 & 2012-13.
- Construction Agreement, Sale Agreement & Sale Deed for the Flats in A block.
- Ledger copies of individual customers for the FY 2010-11 & FY 2011-12

(ii) As per the directions of the Order-in-Appeal No. HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018 against the OIO No.83/2016-Adjn(ST)(ADC) dated 09.06.2017 the VAT charges, Electricity Charges & Water Charges are to be excluded from the Gross Receipts. In this regard, on examination of the records given by Adjudication Section, the VAT charges have been arrived based on the Sale Deed and the Ledgers as detailed in Annexure-I & Electricity Charges have been arrived based on Ledgers detailed in Annexure – II. The summary of the aforesaid annexures is given under;

	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011
VAT	6,66,565	7,43,084
Electricity charges	72,379	45,898
Total	7,38,944	7,88,982

(iii) The VAT charges pertain to certain flats of A Block only as per sale deeds and that of certain flats of C Block only as per Ledgers. The Electricity Charges pertain to Flats in C Block & two flats in A Block only, water charges have not been reflected in the Ledgers."

DISCUSSIONS AND FINDINGS:-

5.1 I have gone through the Commissioner (Appeals') Order (hereinafter referred as "the said order" or "order") ,Show Cause Notice, written submissions, submissions made in the hearing on virtual mode, documents submitted for quantification and other documents available on record. The

issue in brief is 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". The moot point was whether the sale deed value has to be included under the ambit of works contract and the other related points of contention were whether the VAT / STAMP DUTY, registration charges, electricity / water charges are liable to be taxed under the service tax law. There have been multiple rounds of litigation in respect of the two notices as explained above and in the process, it has come for de novo adjudication to me based on the directions of Commissioner (Appeals) in Order-in-Appeal No. Hyd-Excus-SC-AP2-0025-18-19-ST dated 27.04.2018. Accordingly, I take up adjudication of the case.

5.1.1 I find that the assessee has requested to keep the proceedings in abeyance till the disposal of appeal filed by him before Hon'ble CESTAT, Hyderabad and in this regard he has relied upon certain case laws in support of his contention. I observe that I find that as on date there is no stay against operationalisation of the Commissioner (Appeals)' order in the subject case. I have gone through the case laws submitted by him. These are on a different footing in as much as there has been a stay obtained against operationalisation of the order of remand in the case law cited by him. The other case laws are different at the substantive level. The facts and circumstances of the case dealt in this order being different, I am of the view that the case laws cited by assessee are not applicable. I place reliance on

the following case laws in support of my decision to go ahead with the adjudication as per directions of Hon'ble Tribunal. The relevant portion in the case laws is reproduced below for reference:

Anilmma Associates vs Commissioner of C. EX., Delhi 2003 (154) ELT 0279 Tri.-Del: The learned Counsel has not disputed that even the order of the Commissioner affirming the duty demand against the appellants, has been upheld by the Tribunal. He has no doubt stated that the validity of that order of the Tribunal has been challenged by the appellants and the matter is sub judice before the higher Court, but he has admitted that the operation of the order of the Tribunal has not been so far stayed. If that order of the Tribunal is ultimately set aside, it is only then that the appellants will become entitled to the refund of the amount deposited by them. But, at this stage, they have no right to claim the refund of the amount, so deposited when the duty demand stands confirmed against them.

ChemplastSanmar Ltd. vs Commr. of C. Ex., Coimbatore 2004 (177) ELT 0446 Tri.-Mad: We note that the decision in the case of Gujarat Ambuja Cement (supra) was cited by the party before the Commissioner as noted by him in para 54 of the order impugned, but he has endeavoured to distinguish the ratio of this ruling on the ground that the Department has filed reference application and hence the matter is sub judice. It is well settled that unless operation of a particular order is stayed by a higher forum, it has to be acted upon. Merely because the department has filed a reference application, that by itself cannot be a reason not to grant relief flowing from that particular order.

TCS E-Serve Ltd. vs Union of India 2015 (321) ELT 0564 Bom.: There is no legal provision which is brought to our notice enabling the Revenue to keep refund applications pending, merely because an order passed by the Tribunal has been challenged by the Revenue in further appeals. In the teeth of the clear language of law and there being no interim stay in favour of the Revenue, we find no justification for keeping the refund application either pending or rejecting it with the aforesaid endorsement.

5.1.2 Before I present the re- workings as per the directions laid out in the order, I shall reproduce the relevant portion of the discussions by the Commissioner(Appeals) to place the revised quantification of liability in a perspective:

"It can be inferred from the Show Cause Notices, that the assessment is made in terms of Works Contract Composition Scheme Rules on vogue at that point of time. Under the cited rules, the gross value leaves no room for exclusions, other than goods in material whose title is transferred as sale, and the sales

tax levied thereon: Since the elements whose values are sought to be included in the instant case does not fall within this ambit, there is no merit in the appellant's argument that the department's valuation is incorrect."

5.2 Thus, the issue on whether sale deed value requires to be included for the quantification under the said Rules was decided in the said order. Further, regarding other contentious issues viz., VAT, registration, stamp duty, electricity, water charges, cum-tax benefit, decisions have been pronounced in the said order. It is therefore obvious that I do not require to go into the merits of the issue and the scope is limited to re-working the quantification of the amounts as ordered.

5.3 Accordingly, I elaborate on how the amounts have been re-quantified and arrived at based on directions in the said order. It is pertinent to mention that the gross receipts is the sum total of sale deed value, agreement of construction , other taxable receipts ,VAT, Stamp duty , registration charges, reimbursable expenses . Accordingly the notices calculated the tax demanded in the following manner :

As per notice	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011	Total
Gross receipts	Rs.11,65,14,336/-	Rs.11,36,37,141/-	Rs.23,01,51,477/-
Tax	Rs.48,00,391/-	Rs.46,81,850/-	Rs.94,82,241/-

5.4 I must point out that the gross receipts in the notice are in variance with what the assessee has tabulated in his written submissions. However the assessee has not substantiated the same with reasons .Therefore I am not inclined to factor in the receipts as tabulated by the assessee and instead take the gross receipts in the notice for the purpose of quantification. Now, as per the mandate in the said order, except VAT & Electricity/water charges, the rest are to be factored in for quantification and cum-tax benefit has to be extended. To implement the directions in the said order, the AE section was asked to work out the amounts under each of

the heads based on the documents submitted by the assessee for the said purpose. I observe from the AE Section's letter to adjudication section that the workings were made in the following manner. The assessee has submitted the following:

- 1) I.T Returns along with Balance Sheets & Profit & Loss Statement for the Assessment years 2010-11, 2011-12 & 2012-13;
- 2) Agreement of construction/ sale deed i.r.o residential units of Block-A;
- 3) Customer ledgers for the period 01.04.2010 to 31.03.2011& 01.04.2011 to 31.04.2012.

It was reported that the VAT details available against sale deeds and also VAT details available in part from the Customer ledgers submitted by the assessee was taken and tabulated to arrive at the VAT charges for the two periods . As regards electricity and water charges, the amounts were taken from the Customer ledgers submitted and accordingly the amounts are tabulated below:

Charges to be deducted	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011	Total
VAT charges	Rs.6,66,565/-	Rs.7,43,084/-	Rs.14,09,649/-
Electricity and water charges	Rs.72,379/-	Rs.45,898/-	Rs. 1,18,277/-
Total	Rs.7,38,944/-	Rs.7,88,982/-	Rs.15,27,926/-

5.5 This is in contrast to the amounts mentioned by the assessee in his submissions. The assessee has not provided any worksheets to show how he has arrived at the quantification for deductions as tabulated by him in written submissions .Since there is no basis for the tabulation made by the assessee, I decide to go with the department's quantification as it has taken the data made available by the assessee as the basis for arriving at the above amounts. As directed by Commissioner (Appeals), the afore mentioned amount in the foregoing table is liable for deduction from the

gross receipts. Accordingly, I hold that Rs.15,27,926/- is liable for deduction from the gross receipts.

5.6 The quantification for tax based on the workings as mandated in the said order is tabulated as under:

Particulars	Jan'10 to Dec'10 (in Rs)	Jan'11 to Dec'11 (in Rs)	Total (In Rs.)
Gross Receipts	11,65,14,336	11,36,37,141	23,01,51,477/-
Less: Deductions			
VAT	6,66,565/-	7,43,084/-	14,09,649/-
Other Non Taxable Receipts - (Electricity and Water Charges)	72,379/-	45,898/-	1,18,277/-
Taxable value	11,57,75,392/-	11,28,48,159/-	22,86,23,551/-
Net Taxable Value after considering Cum-tax benefit	11,11,94,191/-	10,83,82,788/-	21,95,76,979/-
Tax Amount @ 4.12%	45,81,201/-	44,65,371/-	90,46,572/-

5.7 Accordingly I hold that the assessee is liable to pay service tax of Rs.45,81,201/- for the period Jan, 2010 to Dec, 2010 and Rs. 44,65,371/- for the period Jan, 2011 to Dec, 2011.

5.8 As per Section 75 of the Finance Act, 1994, every person, who fails to credit the tax to the account of the Central Government within the period prescribed, shall pay simple interest for the period by which such crediting of the tax is delayed. In terms of Section 75 of the Finance Act, 1994, I hold that the assessee are liable to pay interest on the Service Tax of Rs. 45,81,201/- payable for the period Jan 2010 to Dec 2010 & Service Tax of Rs. 44,65,371/- payable for the period Jan 2011 to Dec 2011.

5.9 Considering the assessee has provided taxable service during the period from Jan, 2010 to Dec, 2010 & Jan 2011 to Dec 2011 but have not paid Service Tax on the value of the taxable services rendered during the said period, I hold that they are liable for imposition of penalty under Section 76 of the Finance Act, 1994. Further, as they have failed to declare the right income from the taxable services rendered by them in their ST-3 returns they are liable for penalty under Section 77 (2) of the Finance Act, 1994.

6. Accordingly I pass the following order:-

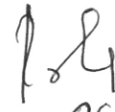
ORDER

(a) In respect of Show cause notice O.R.No.61/2011-Adjn.(ST) dated 23.04.2011

- (i) I confirm the demand of an amount of Rs 45,81,201/- (including Cess) [Rupees Forty Five Lakh Eighty One Thousand Two Hundred and One only] being the Service Tax payable on the taxable services rendered during the period from January 2010 to December 2010, 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.4,58,120 /- [Rupees Four Lakh Fifty Eight Thousand One Hundred and Twenty 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.

(b) In respect of Show cause notice O.R.No.52/2012-Adjn.(ST) dated 24.04.2012

- (v) I confirm the demand of an amount of Rs 44,65,371/- /- (including Cess) [Rupees Forty Four lakh Sixty Five Thousand Three Hundred and Seventy One only] being the Service Tax payable on the taxable services rendered during the period from January 2011 to December 2011 , in terms of sub-section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad
- (vi) 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.
- (vii) I impose a penalty of Rs.4,46,537 /- [Rupees Four Lakh Forty Six Thousand Five Hundred and Thirty Seven 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.
- (viii) 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.


26/7/2021

(G. RASHMI)

ADDITIONAL COMMISSIONER

To,

✓ M/s. Greenwood Estates
5-4-187/3 & 4, II Floor
MG Road, Secunderabad – 500003,
Telangana State.

(By RPAD)

Copy submitted to the Commissioner, Central Tax, Secunderabad GST Commissionerate, Hyderabad.

Copy to:-

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