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OFFICE OF
THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX (APPEALS-II)
7th FLOOR, KENDRIYA SHULK BHAVAN, L.B. STADIUM ROAD,
BASHEER BAGH, HYDERABAD - 500004.

Appeal No.202/2012 (H-II)STax

Date: 07.12.2012

ORDER- IN -STAY-PETITION No.65/2012 (H-II) S.Tax
(Passed By Dr. S.L. Meena Commissioner of Customs, Central Excise &
Service Tax (Appeals-II), Hyderabad)

The subject appeal along with stay petition filed by M/s Greenwood Estates, 5-4-187/3&4, 2nd Floor, M.G.Road, Secunderabad-500 003 (hereinafter referred to as Appellants) against Order-In-Original No. 51/2012-Adjn.(ST) dated 31.08.2012 passed by the Additional Commissioner of Service Tax, Hyderabad-II Commissionerate (hereinafter referred to as Respondent), wherein the lower authority confirmed the demand of service tax of Rs. 48,00,931/- for the period Jan., 2010 to Dec., 2010 in respect of SCN O.R.No. 61/2011-Adjn.(ST) dt. 23.04.2011 under Section 73(2) of the Finance Act, 1994 (FA); confirmed demand of applicable interest under Section 75 of FA and also imposed penalty of Rs. 200/- per day or at the rate of 2% of such tax per month, which ever was higher, for the period of default till the date of payment, under Section 76 and also imposed a penalty of Rs. 1,000/- under Section 77 of the FA. Further in respect of SCN O.R.No. 52/2012-Adjn.(ST) dt. 24.4.2012, the lower authority confirmed the demand of service tax of Rs. 46,81,850/- for the period Jan., 2011 to Dec., 2012 in respect of SCN O.R.No. 62/2011-Adjn.(ST) dt. 24.04.2011 under Section 73(2) of the Finance Act, 1994 (FA); confirmed demand of applicable interest under Section 75 of FA and also imposed penalty of Rs. 200/- per day or at the rate of 2% of such tax per month, which ever was higher, for the period of default till the date of payment, under Section 76 and also imposed a penalty of Rs. 1,000/- under Section 77 of the FA.

2. Brief facts of the case are that the appellants are engaged in providing works contract service. Verification of their records revealed that they had undertaken a single venture by name Greenwood Estates located at Kowkur Village, Malkajgiri Mandal, R.R.District and received amount from customers towards sale of land and agreement of construction of 102 houses for the period Jan., 2010 to Dec., 2010. It was also found that the appellant had not filed ST.3 returns for the said period. The subject venture of M/s Greenwood Estates qualified to be a residential complex as it contained more than 12 residential units with common area and common facilities like park, common water supply etc. and the lay out was approved by HUDA. From the records verified it was found that the appellant entered into a sale deed for sale of undivided portion of land together with semi-finished portion of the flat and an agreement for construction with their customers. On execution of sale deed the right in a property got transferred to the customer, hence the construction service rendered by the appellant thereafter to their customers under agreement of construction were taxable under service tax as there existed service provider and receiver relationship between them. The total amount received by the appellant towards such service was Rs. 11,65,4,336/- during the period Jan., 2010 to Dec., 2010 and the service tax including cess worked out to Rs. 48,00,391/-. Therefore it appeared that the appellants in spite of being well aware of the

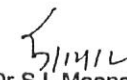
provisions and liability of service tax did not assess and pay the service tax with an intention to evade payment of service tax and also did not file ST.3 returns for the said period, thereby become liable for recovery under sub-section(1) of Section 73 of the FA. Therefore two show cause notices were issued to the appellants covering the period Jan., 2010 to Dec., 2010 vide O.R.No. 61/2011-Adj(ST)Gr.X dt. 23.4.2011 for Rs. 48,00,391/- along with interest and proposing penal action and for the period Jan., 2011 to Dec., 2011 vide O.R.No. 52/2012-Adj(ST)Gr.X dt. 24.4.2012 for Rs. 46,81,850/- along with interest and proposing penal action. As the issue involved was the same, the lower authority took up disposal of both the SCNs and confirmed them vide the impugned order as mentioned in para 1 above. Aggrieved by the impugned order, the appellant filed the subject appeal along with stay petition.

3. A Personal hearing was granted on 26.11.2012. CA Sudhir V.S. along with Shri M.Jaya Prakash, Manager, Accounts & Finance appeared and reiterated the submissions made in the grounds of appeal. Further submitted that the total demand for two SCNs of Rs. 94,82,241/- is as per the impugned OIO but the same should be Rs. 48,30,575/- as per their books of accounts, out of this an amount of Rs. 24,29,885/- had already been paid but the same was not considered in the OIO and stated that they have filed copy of ST.3 returns and challans along with paper books. Requested to waive the pre-deposits.

4. As per Section 35F of the Central Excise Act, 1944, the Commissioner(Appeals) may dispense with the deposit of duty demanded or penalties levied, if he is satisfied that such a deposit would cause undue hardship to the appellants. A reading of the provisions of Section 35F makes it amply clear that waiver of deposit is a discretionary power vested with the Commissioner(Appeals). After going through grounds put forth by the appellants regarding waiver of pre-deposits in their grounds of stay petition as well as during personal hearing, I do not find it a fit case for full waiver of pre-deposits. I therefore direct the appellant to deposit 50% of total tax amounts as confirmed vide the Impugned order by 14.12.2012, after taking into consideration the amount already paid. However pre-deposit of the balance amount, interest and penalties are waived.

5. Upon compliance of the conditions of pre-deposit, the main appeal is fixed for hearing on 17.12.2012 at 11.15 A.M. They are informed that if they fail to comply with the conditions of pre-deposit of tax amount, the appeal will be disposed of without any further opportunity of hearing.

6. The stay petition filed by the appellants is disposed of in above terms.


 (Dr.S.L.Meena)
 Commissioner(Appeals-II)
 Customs Central Excise & Service Tax
 Hyderabad

To

1. M/s Greenwood Estates, 5-4-187/3&4, 2nd Floor, M.G.Road, Secunderabad-500 003
2. The Additional Commissioner of Service Tax, Hyderabad-II Commissionerate..
3. CA Sudhir V.S., M/s. Hiregange Associates, Basheervilla, H.No. 8-2-268/1/16/B, 2nd Floor, Sriniketan Colony, Rd. No. 3, Banjara Hills, Hyderabad-500 034

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1. The Chief Commissioner of Customs & Central Excise, Hyderabad Zone, Hyderabad.
2. The Commissioner of Central Excise, Hyderabad II Commissionerate, Hyderabad.
3. Master Copy.