Hiregange & Associates
Chartered Accountants

Date: 01.09.2016
To
The Assistant Registrar,
Customs, Excise and Service Tax Appellate Tribunal,
1st Floor, HMWSSB Building,
Rear Portion, Khairtabad,
Hyderabad-500 004,

01 SEP 2016

Dear Sir,

Sub: Filing of paper book by M/s. Mehta & Modi Homes for appeal filed against the Order of the Commissioner of Customs, Central Excise & Service tax, Hyderabad-I Commissionerate, C.R Building, L.B Stadium Road, Hyderabad-500 004 in Order-In-Original No.HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016

We are authorized to represent M/s. Mehta & Modi Homes and have filed Appeal Memorandum in the above referred subject on 29.08.2016 (Acknowledgement attached along with this letter). In this regard we are herewith enclosing the Annexures in quintuplicate referred in the Appeal Memorandum along with Index.

Kindly post the matter for hearing at the earliest.

Thanking You,
Yours truly,

For Hiregange & Associates
Chartered Accountants

Venkata Prasad P
Chartered Accountant

Index

S.No.	Particulars	Annexure	Page Nos.
1	Miscellaneous Application for Condonation of Delay		
2	Form ST-5		001-003
3	Statement of Facts		004-006
4	Grounds of Appeal		007-013
5	Authorization		014-014
6	Order-In-Original No.HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016		015-040
7	Personal Hearing Record dated 11.04.2016	I	041-041
8	Reply to SCN dated 10.04.2012	II	042-063
9	SCN dated 10.04.2012	III	064-074
10	Reply to SCN dated 03.12.2013	IV	075-124
11	SCN dated 03.12.2013	V	125-128
12	Letter to department intimating payment of Service Tax	VI	129-130
13	Letter to department dated 12.11.2013	VII	131-145

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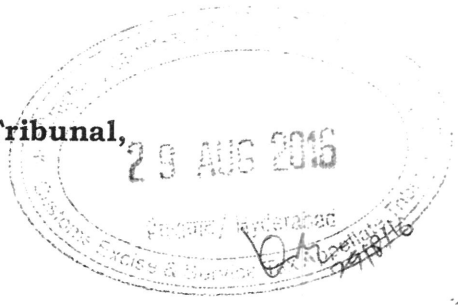
14	Agreement of Sale	**VIII**	146-154
15	Agreement for Construction	**IX**	155-162
16	Agreement for Development Charges	**X**	163-165
17	Sale Deed	**XI**	166-180
18	Booking Form	**XII**	181-182
19	Letters to department dated 07.02.2012 & 30.05.2011	**XIII**	183-186
20	Tribunal Order dated 26.06.2014 in case of M/s. Mehta & Modi Homes	**XIV**	187-188

Hiregange & Associates
Chartered Accountants

Date: 29.08.2016
To
The Assistant Registrar,
Customs, Excise and Service Tax Appellate Tribunal,
1st Floor, HMWSSB Building,
Rear Portion, Khairtabad,
Hyderabad-500 004,



Dear Sir,

Sub: Filing of Appeal by M/s. Mehta & Modi Homes against the Order of the Commissioner of Customs, Central Excise & Service tax, Hyderabad-I Commissionerate, C.R Building, L.B Stadium Road, Hyderabad-500 004 in Order-In-Original No. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016

With reference to the above, we are authorized to represent and reply for M/s. Mehta & Modi Homes and herewith enclose the appeal memorandum against the Order-In-Original No. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016 passed by the Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I Commissionerate, C.R Building, L.B Stadium Road, Basheerbagh, Hyderabad- 500 004 in Form ST-5 containing in quadruplicate along with the authorization letter and **annexure will be submitted in due course.**

Please find herewith enclosed Demand Draft No.035428 dated 12.08.2016 for Rs.5,000/- (Rupees Ten Thousand Only) towards filing fees appeal drawn on HDFC Bank Ltd, Secunderabad, and demand draft No. 043006 dated 26.08.2016 towards filing of application for Condonation of delay, drawn on Karnataka Bank, Hyderabad.

Kindly post the matter for hearing at the earliest.

Thanking You,

Yours truly,

For Hiregange & Associates
Chartered Accountants

Venkat Prasad P
Chartered Accountant

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IN THE CUSTOMS, CENTRAL EXCISE, AND SERVICE TAX APPELLATE TRIBUNAL, 1st FLOOR, REAR PORTION OF HMWSSB BUILDING, KHAIRATABAD, HYDERABAD –4

MISC. APPLICATION No ...../2016
Appeal No ...../2016

MISCELLANEOUS APPLICATION for seeking Condonation of delay in filing appeal by M/s. Mehta & Modi Homes, 5-4-187/3 &4, 2nd Floor, Soham Mansion, M.G Road, Secunderabad-500 003 w.r.t. to Order-In-Original No. HYD-EXCUS-001–COM–003/16-17 dated 25.04.2016 passed by the Commissioner of Customs, Central Excise and Service tax, Hyderabad-500 004
P

BETWEEN:
M/s. Mehta &Modi Homes,
5-4-187/3 & 4,2nd Floor,
Soham Mansion,M.G Road,
Secunderabad- 500 003 ..... **Appellant**

Vs.

The Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad-I Commissionerate,
C.R. Building, L.B.Stadium Road,
Hyderabad – 500 004 ..... **Respondent**

The Applicant humbly submits before Honorable Tribunal as under:

1. The impugned order was passed by Commissioner on 25.04.2016 and received by the applicant on 04.05.2016. The due date to file the appeal is 03.08.2016. The appeal has been filed today i.e. 26.08.2016 resulting in delay of 23 days. The reason for delay is explained herein below.

2. Applicant is in business of construction of residential villas and initially service tax was not paid on premise that same is not liable. Revenue department served SCN & confirmed the demand covering the period upto 31.12.2010 and proceedings of said SCN is now pending before Hon'ble CESTAT which granted stay vide MISC. Order No. 23565/2014 (copy enclosed as annexure __).

3. For the subsequent period, Applicant paid service tax under protest classifying the activity under the category of 'Works contract service' and intimated the same to department. This was done prior to issuance of SCN by department and majority of demands were paid.

4. Two SCN's were issued covering the period January 2011 to June 2012 proposing the demand of service tax under the same category of 'Works contract service' and alleged that there was short payment of service tax, which was due to

   a. SCN calculated the service tax at full rate & not taken the composite rate of 4/4.8% available in terms of 'Works Contract (Composition) Scheme for Payment of Service Tax) Rules, 2007;

   b. Included Taxes, other statutory charges & land development charges in the taxable value, which were excluded by Applicant;

5. Applicant filed their defense reply contesting the liability on multiple grounds and Appeared for personal hearing. Subsequently, impugned order was passed confirming the demand but under different category "Construction of Residential Complex Service (CORS)' and allowing abatement of 67%.

6. As a result, confirmed demand is less than already paid taxes Rs.11,751/- (in one SCN) and there is nominal short payment of tax Rs.87,952/- (in other SCN). Interest liability is also very nominal as tax was paid within due dates (under protest) and total penalty imposed is Rs.8,000/- only.

7. Since the amounts were nominal, there was dilemma as to whether to file the appeal or not.

8. However on 15.08.2016 during discussion with Consultant (on other mater) Applicant is was decided to file the appeal as the matter for previous period is pending before this tribunal.

9. Accordingly, papers were handed over to consultant on 16.08.2016 and The Appeal was [illegible] on 23.08.2016 at Hyderabad and the same was given for the Applicant verification and the approval

was provided on 24.08.2016. The papers were printed and signed on 25.08.2016 and expected to file on 26.08.2016.

10. With all this there has been a delay of 23 days till the expected date of filing, considering the date of receipt as 04.05.2016.

11. The applicant humbly prays before the honorable Tribunal to condone the delay as mentioned above.

    a. The delay was caused only due to misconception that filing of appeal is not warranted as the confirmed demands stands already paid.

    b. In terms of principles laid down by Apex Court in the case of Commissioner, Land Acquisition v. MST Katiji reported in [1987 (28) ELT 185 (S.C.)], delay may be condoned.

PRAYER

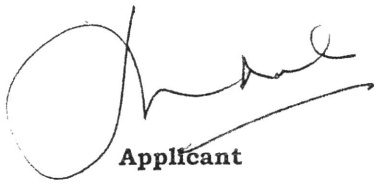
Therefore, it is humbly requested to condone the delay of 23 days in filing the appeal before the Hon'ble CESTAT. Further, we request to accept the appeal filed by the applicant.

VERIFICATION

I, _____, the Applicant hereinabove, do hereby declare that what is stated above is true to the best of our information and belief.

Verified at Hyderabad on this 26th day of August, 2016

Place: Hyderabad



Applicant

FORM ST - 5

[See rule 9(1)]

Form of Appeal to the Appellate Tribunal under sub-Section (1) of Section 86 of the Finance Act, 1994

In the Customs, Excise and Service Tax Appellate Tribunal

APPEAL No..... of 2015

BETWEEN:
M/s. Mehta &Modi Homes,
5-4-187/3 & 4,2nd Floor,
Soham Mansion,M.G Road,
Secunderabad- 500 003

..... **Appellant**

Vs.

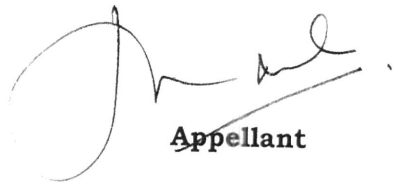
The Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad-I Commissionerate,
C.R. Building,L.B.Stadium Road,
Hyderabad – 500 004

..... **Respondent**

01(a)	Assessee Code	AAJFM0647CST001
(b)	Premises Code	SW0301A001
(c)	PAN or UID	AAJFM0647C
(e)	E-mail Address	info@modiproperties.com
(f)	Phone Number	091-40-66335551
(g)	Fax Number	091-40-27544058
02.	The Designation and Address of the Authority passing the Order Appealed against.	The Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I Commissionerate L.B Stadium Road, Basheerbagh, Hyderabad – 500 004.
03.	Number and Date of the Order appealed against	Order-In-Original No. HYD-EXCUS-001-COM-003/16-17 dated 25.04.2016
04.	Date of Communication of a copy of the Order appealed against	04.05.2016
05.	State of Union Territory and the Commissionerate in which the order or decision of assessment, penalty, was made	Telangana, Commissioner of Customs,Central Excise & Service Tax,Hyderabad-I Commissionerate, L.B Stadium Road, Basheerbagh,Hyderabad – 500 004.
06.	If the order appealed against relates to more than one Commissionerate, mention the names of all the Commissionerate, so far as it relates to the Appellant	Not Applicable
07.	Designation and address of the adjudicating authority in case where the order appealed against is an order of the Commissioner (Appeals)	Not Applicable
08.	Address to which notices may be sent to the appellant	M/s Hiregange& Asscciates, "Basheer Villa", House No: 8-2 268/1/16/B, 2nd Floor, Sriniketan Colony, Road No. 3,

		Banjara Hills, Hyderabad – 500 034 **(Also to Appellant as stated in cause title supra.)**
09.	Address to which notices may be sent to the respondent	Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I Commissionerate L.B Stadium Road, Basheerbagh, Hyderabad – 500 004.
10.	Whether the decision or order appealed against involves any question having a relation to the rate of Service Tax or to the value of goods for the purpose of assessment.	Yes
11.	Description of service and whether in 'negative list'	'Works Contract service' Prior to 'Negative list'
12.	Period of Dispute	January 2011to December 2011 January 2012 to June 2012
13(i)	Amount of service tax, if any Demanded for the period of dispute	Rs.26,39,476/- (Rs.18,04,632/- for the period Jan'11 to Dec'11 + Rs.8,34,844/- for the period Jan'12 to Jun'12)
(ii)	Amount of interest involved up to the date of the order appealed against	Rs. _____/- (Approx.)
(iii)	Amount of refund if any, rejected or disallowed for the period of dispute	Not Applicable
(iv)	Amount of penalty imposed	Rs.8,000/- under Section 76of the Finance Act, 1994
14(i)	Amount of service tax or penalty or Interest deposited. If so, mention the amount deposited under each heading the box. (A copy of the Challan under which the deposit is made shall be furnished)	An amount of Rs.25,63,275/- was already paid& appropriated in order also and Rs.77,754/- was paid using CENVAT credit. the above payments were adjusted towards mandatory pre-deposit (as required) in terms of section 35F of Central Excise Act, 1944. (Challans enclosed as annexure __)
(ii)	If not, whether any application for dispensing with such deposit has been made?	Not applicable
15.	Does the order appealed against also involve any central excise duty demand, and related fine or penalty, so far as the appellant is concerned?	No
16.	Does the order appealed against also involve any customs duty demand, and related penalty, so far as the appellant is concerned?	No
17.	Subject matter of dispute in order of priority (please choose two items from the list below) [i] Taxability – Sl. No. of Negative List. ii) Classification of Services iii) Applicability of Exemption Notification No.,	Priority 1 – Taxabiiity Priority 2 –Valuation

	iv) Export of Services v) Import of Services vi) Point of Taxation vii) CENVAT viii) Refund ix) Valuation x) Others]	
18.	Central Excise Assessee Code, if registered with Central Excise	Not registered with Central Excise
19.	Give details of Importer/Exporter Code (IEC), if registered with Director General Of Foreign Trade	Not Applicable
20.	If the appeal is against an Order-in-appeal of Commissioner (Appeals), thenumber of Order-in-original covered by the said Order-in-Appeal.	Not applicable
21.	Whether the respondent has also filed Appeal against the order against which this appeal is made.	No, as per the knowledge of the appellant
22.	If answer to serial number 21 above is 'Yes', furnish details of appeal.	Not Applicable
23.	Whether the appellant wishes to be Heard in person?	Yes. At the earliest convenience of this Honorable Tribunal.
24.	Reliefs claim in appeal	To set aside the impugned order to the extent aggrieved and grant the relief claimed.



Appellant

STATEMENT OF FACTS

A. M/s Mehta & Modi Homes (Hereinafter referred to as 'Appellant') is a Partnership Firm registered under the Partnership Act, 1932 mainly engaged in the sale of residential villas to prospective buyers under the name & style of **"Silver Oak Bungalows"**. The project was undertaken on the own land of Appellant and in 4 phases. The lands in each phase are disjoint and Phase II, III & Phase VII are the subject matter of present SCN.

B. Various charges received from customers are as under:

   a. Towards the sale deed;
   b. Land development charges;
   c. Towards the construction agreement;
   d. Other Charges like electricity charges, water etc.,
   e. Collection of taxes like VAT, Service Tax, Stamp Duty and Registration Charges from the buyer;

C. The Appellant had voluntarily registered with the Service Tax department under the category of 'Construction of Complex Service' and service tax was paid after taking abatement of 33% vide Notification 18/2005-ST dated 07.06.2005(later amended vide notification 1/2006-ST dated 01.03.2006).

D. Later there was a written instruction from the Ld. Additional Commissioner of Service Tax Hyderabad – II Commissionerate, given to one of the Appellant's group entity seeking them to change the classification to "Works Contract Service" with effective from 01.06.2007 (copy of communication enclosed as **Annexure 1**) and Hence for the collections from 01.06.2007, service tax was paid at the rate of 2.06% under the composition scheme of works contract.

E. However with advent of CBEC circular No. 108/2/2009-ST dated 29.01.2009 clarifying that builders are not liable and only contractors are liable and also given understanding that villas are not subjected to service tax, Appellant stopped paying service tax w.e.f. 01.01.2009 and intimated the same to department (Attached as **Annexure 2**). There was no response by the Department for this letter.

F. Revenue served SCN vide O.R. No. 128/2011-ST (Adjn). (Comm.) dated 24.10.2011 proposing the demand of service tax after classifying the activity under the category of 'Construction of Complex Service' upto 31.05.2007 and under the category of 'Works contract service' from the period 01.06.2007 to 31.12.2010. Now the proceedings of SCN is pending before this Hon'ble CESTAT vide Appeal No.ST/26234/2013-DB and stay was granted vide Misc. order No.23565/2014 dated 26.06.2014 (copy enclosed as **Annexure - 3**).

G. Even though there is strong belief that service tax is not liable, to avoid any litigation, Appellant paid service tax under protest on the amounts received towards *'construction agreements'* and same was informed to the department from time to time. Rs.17,74,315/- (17,16,680/- in cash + Rs.57,635/- using CENVAT) was paid for the period Jan'11 to Dec'11 and similarly Rs.8,66,714/- (8,46,595/- in cash + Rs.20,119/- using CENVAT) for the period Jan'12 to Jun'12 thus totaling Rs.26,41,029/- was paid during the subject period. The intimation letters filed for the subject period are enclosed as **Annexure - 4**. Majority of the payments are made before issuance of SCN.

H. Despite of above payment, Revenue department issued two periodical SCN's covering the period from January 2011 to December 2011 and January 2012 to June 2012 and proposed the demand of service tax on entire amount classifying under 'Works contract service' *qua* Section 65(105)(zzzza) of Finance Act, 1994.

   a. Received towards construction agreement,

   b. Land development charges,

   c. Taxes (like VAT, stamp duty, service tax),

   d. Other charges (like electricity charges, water etc.,)

I. The alleged short payment as per SCN is due to that

   a. SCN calculated the service tax at full rate & not taken the composite rate of 4/4.8% available in terms of'Works Contract (Composition Scheme for Payment of Service Tax)Rules, 2007;

b. Included Taxes, other charges &land development charges in the taxable value, which were excluded by Appellant;

J. Appellant filed their defense reply contesting the liability on multiple grounds and Appeared for personal hearing (copy of SCN reply filed are enclosed & PH record is enclosed as **Annexure - 5**).

K. Subsequently, Ld. Respondent has passed a common order vide Order-In-Original No. HYD-EXCUS-001–COM–003-16-17 dated 25.04.2016 (Copy of the order enclosed as **Annexure - 6**). During the course of adjudication, the Ld. Respondent:

a. Held that project having common facilities and hence same is construction of 'residential project' hence liable for service tax (Para 13.1 of the OIO).

b. Held that benefit of personal use is not available (Para 13.1 of the OIO).

c. Changed the classification from 'WCS' to 'Construction of Complex Service (COCS)' Para 16 of OIO.

d. Confirmed the demand after allowing the benefit of abatement u/s. 01/2006-ST dated 01.03.2006 as amended.

L. Being aggrieved by the Order, the Appellants prefer an Appeal before the CESTAT on the grounds mentioned hereinafter (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.

GROUNDS OF APPEAL

1. The Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.

2. Appellant submits that service tax is not at all payable by builder on the contracts entered with individual buyer involving the sale of land component in absence of proper mechanism for identification of service component therein. **Relied on Suresh Kumar Bansal Vs. UOI 2016 43 S.T.R. 3 (Del.)** wherein it was held that

"Whilst Rule 2A of the Rules provides for mechanism to ascertain the value of services in a composite works contract involving services and goods, the said Rule does not cater to determination of value of services in case of a composite contract which also involves sale of land. The gross consideration charged by a builder/promoter of a project from a buyer would not only include an element of goods and services but also the value of undivided share of land which would be acquired by the buyer. ***(Para 45)***"

"In absence of Rule 2A of the Rules there was no machinery for excluding the non-service element from such composite works contracts involving an element of services and transfer of property in goods. Whilst the impugned explanation expands the scope of Section 65(105)(zzzh) of the Act, it does not provide any machinery for excluding the non-service components from the taxable services covered therein. The Rules also do not contain any provisions relating to determination of the value of services involved in the service covered under Section 65(105)(zzzh) of the Act. Thus the said clause cannot cover composite contracts such as the one entered into by the Petitioners with the builder. (***Para 49)***

"in the present case, neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of service tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of

statutory machinery provisions to ascertain the value of services involved in a composite contract. ***(Para 53)***"

3. Further Appellant submits that construction of villas cannot be subjected to service tax *inter alia* due to

    a. Villas cannot be treated as residential complex defined u/s. 65(91a) of Finance Act, 1994 since villa is not a building containing more than 12 units. Consequently same does not fall under the category of 'Works contract service (WCS)' *qua* Section 65(105)(zzzza) of Finance Act, 1994;

    b. Further judicially also it was held that construction of villas cannot be treated as 'construction of complex' Relied on Macro Marvel Projects Ltd. v. Commissioner — 2008 (12) S.T.R. 603 (Tribunal) maintained by SC in 2012 (25) S.T.R. J154 (S.C.);

    c. Further Villas constructed are being used for his personal use and falls under exclusion portion of the definition of the "Residential complex" defined u/s 65(91a), ibid. hence no service tax. Relied on CBEC circular 108/2/2009-S.T., dated 29.01.2009 and M/s Virgo Properties Pvt Limited Vs CST, Chennai 2010-TIOL-1142-CESTAT-MAD;

4. Mere paying service tax or filing of ST-3 returns under self assessment system does not alter the taxability of the impugned activity as Self assessment cannot be considered as final/decisive and further there is no restriction for claim of the refund of the duty so self-assessed. In this regard reliance is placed on

    a. Central Office Mewar Palaces Org. v. UOI 2008 (12) S.T.R. 545 (Raj.)

    b. Commissioner v. Vijay Leasing Company — 2011 (22) S.T.R. 553 (Tri. - Bang.)

Therefore notwithstanding payment of service tax by Appellant during the subject period, there is no service tax liability at all on the entire

transaction of villa sale that being a position there is no question of any short payment and entire demand fails on this count itself.

Change of classification to 'COCS' by order is not valid as same was not proposed in SCN:

5. Appellant submits that impugned SCN proposed classification under Works Contract Service (WCS) *qua*Section 65(105)(zzzza), *ibid*whereas impugned order confirmed the demand under Construction of Complex Service (COCS) *qua* section 65(105)(zzzh) of Finance Act, 1994. In this regard, it is submitted that demand cannot be confirmed under a classification which was not proposed in SCN. It is submitted that even if the services are within the purview of Service Tax but if they do not conform to the alleged service in the show cause notice, then no Service Tax is payable. Reliance is placed on

   a. Aurobindo Pharma Ltd. v. CCE.., Visakhapatnam-I— 2008 (10) S.T.R. 611 (Tri. - Bang.) wherein it was held that *"we find that the show cause notice has actually invoked the liability to Service Tax payable on the service provided by 'Consulting Engineer' service which is very clear from the show cause notice. The show cause notice has given the scope of the services of 'Consulting Engineer' and it does not refer to any other service such as Chartered Accountant Service, Commercial Training or Coaching Service, etc. Therefore, it is very clear that the demand is beyond the scope of the show cause notice"*

   b. Commissioner v. Career Point Infosystem Ltd. — 2006 (4) S.T.R. 293 (Tribunal)

6. As confirmed classification is different from SCN, then OIO/demand cannot sustain in view of settled law that demand can be confirmed within the limits of SCN and it is not at all permitted under the law to travel beyond the terms of SCN. In this regard reliance is placed on

   a. Hindustan Polymers Co. Ltd. v. Collector of Central Excise, Guntur - 1999 (106) E.L.T. 12 (S.C.)

   b. Commissioner v. Shital International — 2010 (259) E.L.T. 165 (S.C.)

c. GTC Industries Limited v. Collector of Central Excise, New Delhi - 1997 (94) E.L.T. 9 (S.C.)

d. CCE v. R.K. Construction 2016 (41) S.T.R. 879 (Tri. - Mumbai) wherein it was held that *"we do find that the show cause notice issued to the appellant indicates that the classification of the services is to be considered, under the category of 'Commercial or Industrial Construction Services' and directed the respondent to show cause why it should not be done so whereas the adjudicating authority has confirmed the demand of service tax on "Construction of Residential Complex" service which, the first appellate authority has correctly held that the adjudicating authority has traversed beyond the allegation of the show cause notice. If the assessee is not put to notice under which category the service tax sought to be demanded, the conclusion reached by the first appellate authority is correct and does not suffer from any infirmity."*

7. While changing the classification proposed in SCN, Ld. Respondent referring the judgments holding that citation of wring provision cannot vitiate the demand, given a finding (vide Para 16 & 16.1 of OIO) that raising demand under an inappropriate category of service also cannot vitiate the demand. In this regard, it is submitted that finding of Ld. Respondent is unsubstantiated for multiple reasons *inter alia*

a. Citation of provision is largely differs from the citation/proposal of classification since determination of classification involves many factors like satisfaction of criteria laid down in that category and resolving the conflict between similar other categories under which impugned service may classify, determination of valuation, exemptions, point of taxation etc., would differ from each classification. Hence classification cannot be equated with the quoting of mere provision as misconstrued by impugned order;

b. Be that as it may, impugned order classified the category which is different from classification made by Appellant and in such case it is

indispensable requirement in the law that opportunity shall be given to the Appellant for change of classification. Otherwise, action of Ld. Respondent goes against the settled principles of natural justice;

In view of the above, entire demand confirmed under category of 'COCS' does not sustain and requires to be set aside.

Confirmed classification is wrong & inappropriate – hence demand shall be set aside:

8. Without prejudice to the foregoing, Appellant submits that undisputedly impugned construction activity involves both supply of goods and service component. Accordingly, same are works contract and classifiable under the category of "Works contract (WCS)" *qua* Section 65(105)(zzzza) of Finance Act, 1994 and not under any other category namely Construction of residential complex service (COCS). Reliance is placed on Hon'ble **Supreme court decision in CCE v. Larsen and Turbo Ltd 2015 (39) S.T.R. 913 (S.C.)**.Therefore confirmed classification is inappropriate &hence demand fails on this count also.

9. It is the duty of Ld. Respondent to bind by Article 141 of Constitution of India and binding precedent of Supreme Court in the case of *Larsen and Turbo Ltd (supra)* is followed, but which was not done in the instant case, resulting contempt of court. Therefore impugned order is not valid & requires to be set aside.

In Re: Interest &Penalties are not payable/imposable:

10. Appellant submits that on the understating that 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. And it is only after entering construction agreement there exist service provider and service receiver relation and liability of service tax arises, Appellant paid service tax on the amounts received towards construction agreements assessing under the category of 'works contract' within the due dates and also paid interest whenever there was delay. Same was informed to the

department from time to time. This is also evident from the fact that the current OIO appropriated of taxes already paid by them. Since there is no short payment or delayed payment, interest or penalty is not liable.

11. Without prejudice to the foregoing, Appellant submits that when service tax demanded itself is not payable, the question of interest and penalty does not arise. Appellant further submits 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 penalty also.

12. Appellant further submits that there is bona fide litigation is going on and issue was also debatable which itself can be considered as reasonable cause for failure to pay service tax. Accordingly waiver of penalty under section can be made. In this regard reliance is placed on C.C.E., & Cus., Daman v. PSL Corrosion Control Services Ltd 2011 (23) S.T.R. 116 (Guj.)

13. Moreover, it should be appreciate that, Appellant being a tax compliance assessee, has been paying service tax regularly on the construction agreements wherever applicable. Therefore the Appellant has established its bonafides and hence by invoking provision of Section 80 of the Finance Act, entire penalty proceedings requires to be dropped based on this submission also. Appellant wishes to rely on the Hon'ble Apex court decision in case of Nizam Sugar Factory Vs CCE 2006 (197) E.L.T 465 (S.C) in this behalf.

14. The appellant craves leave to alter, add to and/or amend the aforesaid grounds.

15. The appellant wish to be personally heard before any decision is taken in this matter.

For M/s. Mehta &Modi Homes

Authorized Signatory

PRAYER

Therefore it is prayed

a. To hold that the impugned order of the Ld. Commissioner to the extent aggrieved is not valid and requires to be set-aside;

b. To hold that construction of independent Villas are not covered under the definition of Residential Complex service and not taxable;

c. To hold that Construction of Residential complex for "Personal Use" is not covered under Tax net;

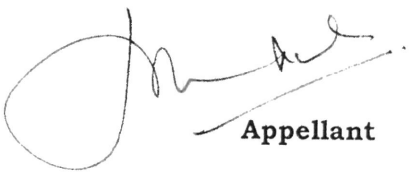
d. To hold that there is no further tax remain unpaid during the subject period, if demand stands confirmed;

e. To hold no interest shall be leviable under Section 75 of the Finance Act, 1994;

f. To hold no penalty shall be leviable under Section 76 of the Finance Act, 1994.

g. To hold that Appellant is eligible for the benefit of Section 80 of the Finance Act, 1994

h. Any other consequential relief is granted.

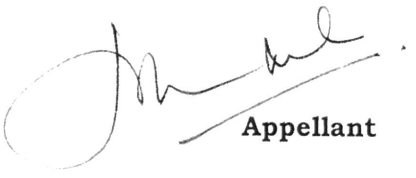


Appellant

VERIFICATION

I, SohamModi, Partner of M/s.Mehta &Modi Homes, the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the25th day of July, 2016
Place: Hyderabad



Appellant

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, 1st FLOOR, REAR PORTION OF HMWSSB BUILDING, KHAIRATABAD, HYDERABAD – 500 004

Sub: Appeal against the order of the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-I Commissionerate in Order in Original No. HYD-EXCUS-001–COM–003/16-17 dated 25.04.2016.

I, SohamModi Partner of M/s.Mehta &Modi Homes,, Secunderabad hereby authorize and appoint Hiregange& Associates, Chartered Accountants, Bangalore 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: -

- 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.
- 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.
- 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 on this 25th day of July 2016 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: 25.07.2016 **For Hiregange& Associates**

Chartered Accountants

Address for service :

"Basheer Villa" H.No.8-2-268/1/16/B,
2nd Floor, Sriniketan Colony,
Road No.3, Banjara Hills,
Hyderabad-5000034

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	Mem./Roll No.	Signature
01.	Shilpi Jain	CA	221821	
02.	Venkata Prasad P	CA	236558	