



सत्यमेव जयते



జిఎస్టీ మరియు సెంట్రల్ ట్యాక్స్ కమిషనర్ కార్యాలయం
హైదరాబాద్ అప్పీల్స్-II కమిషనరేట్
7వ అంతస్తు, GST భవన్: LB స్టేడియం రోడ్, బషీర్ బాగ్, హైదరాబాద్, పిన్-500004
जीएसटी और केंद्रीय कर आयुक्त कार्यालय, अपील-II हैदराबाद कमिश्नरेट
सातवातल, जी.एस.टी.भवन, एल.बी.स्टेडियम रोड, बशीरबाग, हैदराबाद, पिन - ५००००४
OFFICE OF THE COMMISSIONER OF GST & CENTRAL TAX
HYDERABAD APPEALS-II COMMISSIONERATE

7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, PIN-500004,
Telangana State.

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अपीलसं : Appeal No: 32 /2021 (SC) ST 1/269
OIO No. (Denovo) 05/2021-22-SEC-ADJN-ADC(ST)Dt. 26.07.2021.
DIN-20221056DN0000999C17

अपील आदेशसं: ORDER-IN-APPEAL No.: HYD-SVTAX-SC-AP2-062-22-23-ST
dt.31.10.2022

जारी करने वाले अधिकारी: पी.देवराज, आयुक्त, अपील-II, जीएसटी केन्द्रीय कर, हैदराबाद

Passed by : P.DEVARAJ, COMMISSIONER OF GST & CENTRAL TAX, APPEALS-II,
Hyderabad

प्रस्तावना / P R E A M B L E

1	आदेश जिनके नाम जारी किया गया है उस व्यक्ति के निजी उपयोग के लिए यह प्रतिमुक्त में दी जाती है। This copy is granted free of cost for the private use of the person to whom it is issued.
2.(a)	कोई भी निर्धारित इस आदेश से असहमत हो तो वे वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत सीमा शुल्क, उत्पाद शुल्क व सेवा कर अपील अधिकरण, क्षेत्रीय बेंच, प्रथम तल, हैदराबाद मेट्रो जल आपूर्ति और सीवरेज बोर्ड इमारत (पीछे के हिस्से), खैरताबाद, हैदराबाद, तेलंगाना-500004 के समक्ष अपील दायर कर सकते हैं। Any appellants aggrieved by this order may file an appeal under Section 86 of the Finance Act, 1994 to the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench, 1st Floor, HMWSSB Building (Rear Portion), Khairatabad, Hyderabad, TS-500004.
2.(b)	केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 एफ के खंड (iii) के अनुसार, धारा 85 की उप-धारा (5) में संदर्भित आदेश या निर्णय के विरुद्ध अपील के लिए, अपीलकर्ता को निर्णय या जिस आदेश के विरुद्ध अपील की गई हो उसके अनुसरण के लिए कर का, ऐसे मामले में जहां कर या कर और दंड विवादित हो, या दंड का, जहां ऐसा दंड विवादित हो, दस प्रतिशत जमा करना होगा : सेवा कर के मामले में, एफए, 1994 की धारा 83 के प्रभाव से अधिनियम की धारा 35 एफ लागू है। As per clause (iii) of Section 35F of the CEA, 1944, the appeal against the decision or order referred to in sub-section (5) of section 85, the appellant has to deposit ten per cent of the tax, in case where tax or tax and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Section 35F of the Act is applicable to service tax case by virtue of Section 83 of FA, 1994.
3.	उपधारा (1) [या उपधारा (2)] के अंतर्गत प्रत्येक अपील जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारित दिनांक से तीनों महीने के भीतर (मुख्य आयुक्तों या आयुक्तों की समिति) के समक्ष, जैसे भी मामला हो, दायर किया जाना चाहिए। Every appeal under sub-section (1) [or sub-section (2) or sub-section (2A)] of Section 86 of FA, 1994 shall be filed within <u>three months</u> of the date on which the order sought to be appealed against was received by the appellants, the [Committee of the Commissioners], as the case may be.

4.	पैरा 2 में उल्लिखित अपील एसटी 5/ एसटी 7 प्रोफॉर्मा में चार प्रतियों में जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारिती के पास पहुँचने की तारीख से तीन महीने के भीतर किया जा सकता है। जिस आदेश के विरुद्ध अपील किया जाना चाहता हो और अपील करने के लिए लिखित मूल आदेश की उस आदेश की चार प्रतियाँ संलग्न होने चाहिए (जिसमें से एक प्रति प्रमाणित प्रति होने चाहिए)
	The appeal, as referred to in Para 2 above, should be filed in S.T.5/S.T.-7 proforma in quadruplicate; <u>within three months</u> from the date on which the order sought to be appealed against was communicated to the party preferring the appeal and should be accompanied by four copies each (of which one should be a certified copy), of the order appealed against and the Order-in-Original which gave rise to the appeal.
5.	अपील के साथ ट्रिब्यूनल के दक्षिणी बेंच के सहायक रजिस्ट्रार के पक्ष में जहाँ ट्रिब्यूनल स्थित है वहाँ के किसी भी राष्ट्रीय कृत बैक की शाखा से प्राप्त किए गए खांकिट मांग ड्राफ्ट संलग्न होने चाहिए और अधिनियम की धारा 86 के अंतर्गत विनिर्दिष्ट शुल्क के भुगतान का प्रमाण भी संलग्न होने चाहिए। देय शुल्क निम्नलिखित है।
	The appeal should also be accompanied by a crossed bank draft drawn in favour of the Assistant Registrar of the Tribunal, drawn on a branch of any nominated public sector bank at the place where the Tribunal is situated, evidencing payment of fee prescribed in Section 86 of the Act. The fees payable are as under:-
	(क) जिस मामले से अपील संबंधित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख या उससे कम हो तो, रुपये एक हजार;
	(a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
	(ख) जिस मामले से अपील संबंधित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख से अधिक, लेकिन रुपये पचास लाख से कम, हो तो, रुपये पाँच हजार;
	(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;
	(ग) जिस मामले से अपील संबंधित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड, रुपये पचास लाख से अधिक हो तो, रुपये दस हजार;
	(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees;
5.(i)	उसी की धारा 86 की उपधारा (4) के अंतर्गत बताए गए कुल आपत्तियों के ज्ञापन के संबंध में कोई शुल्क देय नहीं है।
	No fee is payable in respect of the Memorandum of Cross Objections referred to in Sub-Section (4) of Section 86 ibid.
6.	अपीलीय ट्रिब्यूनल के समक्ष प्रस्तुत किए गए सभी आवेदन पत्र के साथ: Every application made before the Appellate Tribunal:
	(क) रोक की मंजूरी के लिए अपील या गलती को सुधारने के लिए अथवा किसी अन्य प्रयोजन के लिए आवेदन पत्र; या
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(ख) किसी अपील या आदेश को पुनः स्थापित करने के लिए उसके साथ रुपये पाँच सौ का शुल्क होना चाहिए।
	(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees;
6.(i)	इस उपधारा के अंतर्गत आयुक्त द्वारा दायर किए गए आवेदन के मामले में कोई शुल्क देय नहीं है।
	No fee is payable in case of an application filed by Commissioner under this sub-section.
7.	केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 और केन्द्रीय उत्पाद शुल्क नियमावली, 2002 तथा सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलीय ट्रिब्यूनल (प्रक्रिया) नियमावली, 1982 में शामिल इससे और अन्य संबंधित मामलों को नियंत्रित करने वाले प्रावधानों की ओर ध्यान आकर्षित किया जाता है।
	Attention is invited to the provisions governing these and other related matters, contained in the Central Excise Act, 1944 and Central Excise Rules, 2002 and the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

BEFORE THE COMMISSIONER (APPEALS-II), GST AND CENTRAL TAX, HYDERABAD
APPEAL NO.32/2021 (SC) ST

M/s. Greenwood Estates,
#5-4-187/3 & 4, II Floor,
Soham Mansion, MG Road,
Secunderabad – 500 003TS

--Appellant

Vs

The Additional Commissioner of CGST,
Secunderabad GST Commissionerate,
Hyderabad
Respondent

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These proceedings arise out of the Appeal No. 32/2021 (SC) ST filed by M/s. Greenwood Estates, # 5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad - 500003 (hereinafter referred to as the "appellant"), aggrieved by the Order-in-Original No. (Denovo) 05/2021-22-SEC-ADJN-ADC(ST) Dated 26.07.2021 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner of Central Tax, Secunderabad CGST Commissionerate (hereinafter referred to as the "Original authority"/ Adjudicating Authority").

2., Brief facts of the case are that the appellants are engaged in the activity of construction of residential flats and selling the same to the common public. Two periodical SCNs were issued to the appellants for the period from January 2010 to December 2010 and from January 2011 to December 2011. Both the above SCNs were adjudicated by the Additional Commissioner, Hyderabad – II Commissionerate vide OIO No. 51/2012-Adjn(ST)ADC dated 31.08.2012 wherein the adjudicating authority confirmed the service tax demand. Aggrieved by the OIO, the appellant filed an appeal before the Commissioner (Appeals), Hyderabad. The Commissioner (Appeals) vide OIA No. 39/2013(H-II) S.Tax dated 27.02.2013 remanded the matter to the lower authority for arriving at the correct quantification of the service tax liability. Aggrieved by the above appellate orders, the appellant carried the matter to the Honourable; CESTAT who vide their Final Order No. 20401/2014 dated 25.03.2014 remanded the matter back to the lower authority for arriving at the correct quantification of service tax liability. The Additional Commissioner vide OIO No. 83/2016-Adjn(ST)(ADC) dated 09.06.2017 adjudicated the matter. Aggrieved by the OIO dated 09.06.2017 the appellant filed appeal with the Commissioner (Appeals), who vide OIA No. HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018 remanded the matter to the lower authority with specific remand directions for re-quantification of the service tax liability.

3. In compliance of the remand directions, the impugned order is passed by the Additional Commissioner, Secunderabad GST Commissionerate. Aggrieved by the impugned order, the appellant preferred the present appeal on the following grounds

- i. There is no service tax liability on the builder during the period prior to 01.07.2010. The appellant contended that they have challenged the orders of the Commissioner (Appeals) dated 27.04.2018 before the Honourable CESTAT. The impugned order is a consequence of the Commissioner (Appeals) order dated 27.04.2018. The appellant contended

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that the matter is sub judice and that in view of the orders of the Honourable CESTAT, Mumbai in the case of M/s. Vilsons Roofing Products Private Limited Vs CCE, Kolhapur reported in 2013-TIOL-2023-CESTAT-MUM, it is not warranted to pass any order on the remand proceedings and that the order passed by the Adjudicating Authority has no legal sanctity.

- ii. Without prejudice to the above stand, the appellant submitted that the impugned order is not correct inasmuch as the details submitted by the appellant were not considered by the Adjudicating Authority as per the remand directions. The appellant submitted the required details to the Adjudicating Authority and has not received any communication from the Adjudicating Authority regarding any further requirement of information. While carrying out the re-quantification, the Adjudicating Authority has not followed the remand directions and has not arrived at the correct quantification. The appellant has submitted the details of all the receipts flat-wise along-with the appeal. The appellant contested that the re-quantification carried out by the Adjudicating Authority is incorrect and is not acceptable.
- iii. The appellant further contested that they are not required to pay service tax on the amounts received prior to 01.07.2010 and that the levy of service tax itself is challenged before the CESTAT. They further contended that when the service tax itself is not payable, the question of paying interest and penalty does not arise.
- iv. The appellant submitted that they are of the bonafide belief that no service tax is payable by them and they have not collected the service tax, penalty under Section 76 resorting to the provisions of Section 80 of the Act and under Section 77 is not imposable. No substantiation has been given for imposing penalty under Section 77 of the act. The benefit of Section 80 of the Act should be extended to them and no penalty is imposable.

4. The appellant was given an opportunity to be heard personally. The appellant reiterated the grounds already submitted by them.

Discussions and Findings:

5. The issues involved in the instant appeal have emanated from the impugned order consequent to the remand proceedings. The remand directions were clear. The impugned services rendered by the appellant were held to be works contract service and it was directed to arrive at the quantification of service tax by considering the data submitted by the appellant in the CD.

6. The only issue to be arrived out is whether the original authority has complied with the remand directions or not. I find the appellate authority in the OIA dated 27.04.2018 has made the following observation.

The value of semi-finished flats is not merely inconsequential for arriving at the gross receipts for assessment to tax. If the appellant's view is accepted, there would have been no need to issue the Show Cause Notice in the first place since the liability on the finishing contract undisputed, it is only the inclusion of the sale deed (including unfinished flat built on composite contract of land + unfinished flat) as well as

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elements like registration charges, stamp duty, electricity / water charges etc., that is disputed in the instant case. I find that the appellant submitted his calculations [in CD], which have not been studied or considered by the Adjudicating Authority in his findings.

- i. The elements of VAT (if any), and value of goods whose title stands transferred as sale alone is excludible, the same may be excluded.
- ii. Registration charges / stamp duty are not excluded in the composition scheme, hence includible for assessment to Works Contract Services; it is expressly clarified that land is not 'goods' for the purpose of composition scheme, and the land value mentioned in the sale deed is includible for assessment under the composition scheme.
- iii. 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 levy, as settled by the Apex Court in Union of India Vs Intercontinental Consultants and Technocrats Pvt. Ltd. therefore I hold that the same shall be excluded for assessment of tax; and that cum-tax benefit shall be extended under Sec 67(2) on the values included for the sale deed.

7. From the above, it is evident that the remand directions were with regard to the exclusion of certain elements from the taxable value and arrive at the quantification of the service tax liability. In view of this, I find that the appellant's request to reclassify their services or extend exemption is beyond the scope of the remand directions and as such the original authority cannot be found wrong for not considering the other grounds raised by the appellant other than remand directions at the time of adjudication. Further, the appellant has carried the matter of exemption and classification before the Honourable CESTAT and it would be sub-judice for considering all the aspects pending before the Honourable Tribunal. In view of this, I find that the appeal is not maintainable beyond the remand directions and I hold that the appeal stands rejected in respect of all the aspects which are out of the remand directions.

8. I find that the appellant has taken a view that the value of the sale deed has to be excluded from the taxable value and the value of the further construction agreement is alone taxable with the exclusions claimed by them. I hold that the contention of the appellant is not correct inasmuch the matter stands settled due to the findings of the appellate authority as mentioned above. The composite value of the flat including that of the sale deed value and construction agreement value would form part of the taxable value. This is already decided in the appellate order earlier. Accordingly, the appellant's contention to the extent of exempting the sale deed value is not sustainable and is devoid of merits and as such liable to be rejected. I hold that the appeal stands rejected to this extent.

9. While arriving at the quantification, the original authority has arrived at the value in respect of VAT paid and the other non-taxable receipts from the financial statements of the appellant. The reason why the adjudicating authority has considered the values from the financial statements rather than from the information submitted by the appellant appears to be is to arrive at the respective elements year-wise, i.e., the amounts incurred by the appellant during the relevant financial year have been considered by the adjudicating authority. However, the information submitted by the appellant is not containing information regarding the respective receipts year-wise.

10. In view of the above discussions, I find that the adjudicating authority has not erred in arriving at the correct quantification and I find that there is no need to interfere with the same. I hold that the appeal stands rejected to this extent.

11. The appellant relied on a number of case laws in their defence. However, I find that none of the case laws is squarely applicable to the present case inasmuch the facts and circumstances of the case on hand are different from the case-laws cited above. In the case in hand it was required to re-quantify the tax liability as per the remand directions. The appellant has already challenged the remand directions and carried the matter to higher forum. In such a case, reliance of the said case laws is not applicable to the present case. Accordingly, I hold that the appeal stands rejected to this extent.

12. In view of the above discussions and findings, I pass the following order:

ORDER:-

The appeal is rejected and the impugned order is upheld.

पी.देवराज / P.DEVARAJ

आयुक्त, अपील-II / COMMISSIONER, APPEALS-II

हैदराबाद / HYDERABAD



To

M/s. Greenwood Estates,
#5-4-187/3 & 4, II Floor,
Soham Mansion, MG Road,
Secunderabad – 500 003 TS

(By Speed Post)

Copy submitted to:

The Chief Commissioner of Customs & Central Tax, Hyderabad Zone, Hyderabad.

Copy to:

1. The Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad.
2. Additional Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad.
3. Master File.

आयुक्त, अपील-II / COMMISSIONER, APPEALS-II

हैदराबाद / HYDERABAD