सत्यमेव जयते

జిఎస్టి మరియు సెంట్రల్ పన్ను కమీషనర్ కార్యాలయం
హైదరాబాద్ అప్పీల్స్-(II) కమిషనరేట్
7వఅంతస్తు, GSTభవన్:LBస్టేడియంరోడ్, బషీర్‌బాగ్, హైదరాబాద్, పిన్-500004
जीएसटीऔरकेंद्रीयकरआयुक्तकाकार्यालय, अपील-(II)हैदराबादकमिश्नरेट
सातवातल, जी.एस.टीभवन, एल.बी.स्टेडियमरोड, 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.
Ph: 040-23234219/ e-Mail: cgst.hydappeals2@gov.in

अपीलसं : Appeal No: 30 /2021 (SC) ST 1273
OIO No. 07/2021-22-SEC-ADJN-ADC(ST)Dt. 29.07.2021.
DIN-20221056DN0000444A11

अपीलआदेशसं: ORDER-IN-APPEAL No.: HYD-SVTAX-SC-AP2-061-22-23-ST
dt. 31.10.2022

जारीकरनेवालेआधिकारी: पी.देवराज,आयुक्त,अपील-II,जीएसटीवकेन्द्रीयकर,हैदराबाद

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

प्रस्तावना / PREAMBLE

1	आदेशजिनकेनामजारीकियागयाहैउसव्यक्तिकेनिजीउपयोगकेलिएयहप्रतिमुफ्तमेंदीजातीहै।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2. (a)	कोईभीनिर्धारितीइसआदेशसेअसहमतहोतोवित्तअधिनियम, 1994 कीधारा 86 केअंतर्गतसीमाशुल्क,उत्पादशुल्कवसेवाकरअपीलअधिकरण,क्षेत्रीयबेंच,प्रथमतल,हैदराबादमेट्रोजलआपूर्तिऔरसीवरेजबोर्डइमारत(पीछेकेहिस्से), खैरताबाद, हैदराबाद, तेलंगाना-500004केसमक्षअपीलदायरकरसकतेहैं।
	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)	केन्द्रीयउत्पादशुल्कअधिनियम,1944 कीधारा 35 एफ़केखंड (iii) केअनुसार,धारा 85 कीउप-धारा (5) मेंसंदर्भितआदेशयानिर्णयकेविरुद्धअपीलकेलिए,अपीलकर्ताकोनिर्णययाजिसआदेशकेविरुद्धअपीलकीगईहोउसकेअनुसरणकेलिएकरका, ऐसेमामलेमेंजहांकरयाकरऔरदंडविवादितहो,यादंडका,जहांऐसादंडविवादितहो,दसप्रतिशतजमाकरनाहोगा : सेवाकरकेमामलोंमें,एफ़ए, 1994 कीधारा 83 केप्रभावसेअधिनियमकीधारा 35 एफ़लागूहै।
	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) [याउपधारा (2) याउपधारा (2ए)]केअंतर्गतप्रत्येकअपीलजिसआदेशकेविरुद्धअपीलकियाजानाहोउसआदेशकेनिर्धारितीद्वाराप्राप्तकरनेकीतारीखसेतीनमहीनेकेभीतर (मुख्यआयुक्तोंयाआयुक्तोंकीसमिति] केसमक्ष,जैसेभीमामलाहो,दायरकियाजानाचाहिए।
	Every appeal under sub-section(1) [or sub-section(2) or sub-section(2A)] of Section 86 of FA,1994 shall be filed within three months 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 मेंउल्लिखितअपीलएसटी 5/ एसटी 7 प्रोफॉर्मामेंचारप्रतियोंमेंजिसआदेशकेविरुद्धअपीलकियाजानाहोउसआदेशकेनिर्धारितीकेपासपहुँचनेकीतारीखसेतीनमहीनेकेभीतरकियाजासकता है।जिसआदेशकेविरुद्धअपीलकियाजानाचाहताहोऔरअपीलकरनेकेलिएलिखितमूलआदेशकीउसआदेशकीचारप्रतियाँसंलग्नहोनेचाहिए (जिसमेंसेएकप्रतिप्रमाणितप्रतिहोनेचाहिए)
	The appeal, as referred to in Para 2 above, should be filed in S.T.5/S.T.-7 proforma in quadruplicate; within three months 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.	अपीलकेसाथट्रिब्यूनलकेदक्षिणीबेंचकेसहायकरजिस्ट्रारकेपक्षमेंजहांट्रिब्यूनलस्थितहैवहाँकेकिसीभीराष्ट्रीयकृतबैंककीशाखासेप्राप्तकिएगएरेखांकित मांगड्राफ्टसंलग्नहोनेचाहिएऔरअधिनियमकीधारा 86 केअंतर्गतविनिर्दिष्टशुल्ककेभुगतानकाप्रमाणभीसंलग्नहोनेचाहिए।देयशुल्कनिम्नलिखितहै।
	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) जिसमामलेसेअपीलसंबन्धितहोउससमामलेमेंमांगागयासेवाकरऔरव्याजतथाकिसीभीकेन्द्रीयउत्पादशुल्कअधिकारीद्वारालगायागयादंडरुपयेपाँचलाखयाउससेकमहोतो,रुपयेएकहज़ार;
	(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) जिसमामलेसेअपीलसंबन्धितहोउससमामलेमेंमांगागयासेवाकरऔरव्याजतथाकिसीभीकेन्द्रीयउत्पादशुल्कअधिकारीद्वारालगायागयादंडरुपयेपाँचलाखसेअधिक,लेकिनरुपयेपचासलाखसेकम,होतो,रुपयेपाँचहज़ार;
	(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) जिसमामलेसेअपीलसंबन्धितहोउससमामलेमेंमांगागयासेवाकरऔरव्याजतथाकिसीभीकेन्द्रीयउत्पादशुल्कअधिकारीद्वारालगायागयादंड,रुपयेपचासलाखसेअधिकहोतो,रुपयेदसहज़ार;
	(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)	उसीकीधारा 86 कीउपधारा (4) केअंतर्गतबताएगएकुलआपत्तियोंकेज्ञापनकेसंबंधमेंकोईशुल्कदेयनहीहै।
	No fee is payable in respect of the Memorandum of Cross Objections referred to in Sub-Section (4) of Section 86 ibid.
6.	अपीलीयट्रिब्यूनलकेसमक्षप्रस्तुतकिएगएसभीआवेदनपत्रकेसाथ: Every application made before the Appellate Tribunal:
	(क) रोककीमंजूरीकेलिएअपीलयागलतीकोसुधारनेकेलिएअथवाकिसीअन्यप्रयोजनकेलिएआवेदनपत्र;या
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(ख) किसीअपीलयाआदेशकोपुन: स्थापितकरनेकेलिएउसकेसाथरुपएपाँचसौकाशुल्कहोनेचाहिए।
	(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:
6. (i)	इसउपधाराकेअंतर्गतआयुक्तद्वारादायरकिएगएआवेदनकेमामलेमेंकोईशुल्कदेयनहीहै।
	No fee is payable in case of an application filed by Commissioner under this sub-section.
7.	केन्द्रीयउत्पादशुल्कअधिनियम, 1944 औरकेन्द्रीयउत्पादशुल्कनियमावली, 2002 तथासीमाशुल्क,केन्द्रीयउत्पादशुल्कवसेवाकरअपीलीयट्रिब्यूनल (प्रक्रिया) नियमावली, 1982 मेंशामिलइससेऔरअन्यसंबन्धितमामलोंकोनियंत्रितकरनेवालेप्रावधानोंकीओरध्यानआकर्षितकियाजाताहै।
	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 OF GST AND CENTRAL TAX, HYDERABAD APPEALS-II COMMISSIONERATE.APPEAL NO. 30/2021 (SC) ST

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

Vs

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

*****

These proceedings arise out of the Appeal No. 30/2022 (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. 07/2021-22-SEC-ADJN-ADC(ST)Dated 29.07.2021 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner of Central Tax, SecunderabadCGST 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. The appellant was issued with a periodical SCN for the period from April 2015 to June 2017. The above SCN was adjudicated by the Additional Commissioner, Secunderabad GST Commissionerate vide the impugned order after following due process of law. Aggrieved by the impugned order, the appellant preferred the present appeal on the following grounds

i. The SCN is not valid as the SCN has taken a dual stand of classifying the services rendered by the appellant as construction services and works contract service. Since the SCN is self-contradictory and erroneous the same is not sustainable and liable to be set aside.

ii. The findings of the impugned order is not in line with the allegations of the SCN and are beyond the scope of SCN.

iii. There is no service tax on the semi-finished flats and the SCN admitting the same demanded the service tax on the same.

iv. The Honourable CESTAT, Hyderabad in the appellants own case for the period from April 2014 to March 2015 vide Final Order No. A/31078/2019 dated 19.11.2019 has remanded the matter to the lower authority for re-quantification after excluding the sale deed value.

v. The other non-taxable receipts (Corpus Fund, Electricity deposit, water charges, service tax etc.) are not liable for service tax and shall not be included in the taxable value.

vi. The benefit of cum tax value has to be extended.

vii. No interest and penalties are imposable as no service tax itself is payable.

3. The appellant was given an opportunity to be heard personally, wherein the authorized representative appeared on behalf of the appellant and reiterated the submissions made in the grounds of appeal memorandum.

Discussions and Findings:

4. The issues involved in the instant appeal is a periodical notice. The appellant was issued with periodical notices demanding service tax on their activities under works contract services. The matter has been carried by the appellant to the Honourable CESTAT and a number of times the same has been, remanded back to the original authority for re-quantification.

5. This appellate authority has also received appeals on the subject matter for various periods. I observe that the matter was considered by the appellate authority and remanded back to the original authority with specific directions for the earlier period. By respecting the orders passed by my predecessor, I choose to follow the same stand. The matter is before the Honourable Tribunal and I have no reason to interfere in this matter at this stage.

6. 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.

7. While arriving at the quantification, the original authority has excluded the value of VAT and registration charges paid and allowed abatement of 30% in terms of Rule 2(A)(ii) of the Service Tax (Determination of Value) Rules, 2006 and arrived at the service tax liability. I find that the said valuation method followed by the original authority is not challenged by the appellants. I find that no prejudice is caused to the

appellant and hold that the contention of the appellant is devoid of merits. In view of the above, I hold the appeal is liable to be rejected to this extent.

8. 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. The issue on hand is a part of a continuous demands having been raised by the respondent department periodically. In view of the same, I observe that the case laws cited by the appellant does not come to their defence. The appellant contended that no interest and penalty is payable as no service tax liability exist. Since, the service tax liability as demanded by the original authority is liable to be upheld, the contention of the appellant is not sustainable to this extent.

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

ORDER:-

The appeal is rejected and the impugned order is upheld.

31.10.2022

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,
Se0cunderabad – 500 003 TS

<u>(By Speed Post)</u>

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