



**सेवाकरप्रधानआयुक्तकाकार्यालय**  
**OFFICE OF THE PRINCIPAL COMMISSIONER OF SERVICE TAX**  
**सेवाकरआयुक्तालय : : SERVICE TAX COMMISSIONERATE**

**11-5-423/1/A::सीतारामप्रसादटावर::रेडहिलस::हैदराबाद- 4**

**11-5-423/1/A:: SITARAM PRASAD TOWER::RED HILLS::HYDERABAD-4**

OR No.61/2011-Adjn(ST)ADC.Gr.X

Dated. 9.06.2017

OR No.52/2012-Adjn(ST)(ADC)

New OR No.26/2014-Adjn(ST)(ADC)

C.No.IV/16/197/2011-ST(Gr-X)

**मूलआदेशसं° ORDER IN ORIGINAL No:83/2016 - Adjn(ST)(ADC)**

(Passed by P.Anand Kumar, I.R.S., Additional Commissioner)

**प्रस्तावना**

**PREAMBLE**

**1.** निजी प्रयोग के लिए इसे जिस व्यक्ति को जारी किया गया यह प्रति बिना मूल्य के दी जाती है

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**2.** जोभीव्यक्तिवित्तअधिनियम, 1994 केअंतर्गत धारा 85(3A)सेदुषप्रभावितहो. इसप्रकार प्राप्तआदेशनिर्णयकेखिलाफआदेशकी प्राप्तिकेदोमहीनोंकेभीतरआयुक्त(अपील), मुख्यालयकार्यालय, 7 वॉल, एल.बी. स्टेडियमरोड, बशीरबाग, हैदराबाद 500 004 कोअपनीअपीलप्रस्तुतकरसकताहै।

Under Section 85(3A) of the Finance Act, 1994, any person aggrieved by this order can prefer an appeal within two months from the date of communication of such order/decision to the Commissioner (Appeals), Hqrs. Office, 7<sup>th</sup> floor, L.B.Stadium Road, Basheerbagh, Hyderabad - 500 004.

**3.** धारा 85 केअंतर्गत आयुक्त(अपील) कोकीजानेवालीअपीलफार्म एस.टी-4 मेंहोऔर इसकीजॉचनिर्धारितपद्धतिकेअनुसारकीजानीचाहिए।

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-4 फार्म मेंकीगई अपीलअनुलिपिमेंप्रस्तुतकीजानीचाहिएऔर उसकेसाथजिसनिर्णययाआदेशकेविरुद्धअपीलकीजारहीहो उसकीएकप्रतिभीसंलग्नकीजानीचाहिए;

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.** अपीलपरऔरजिसनिर्णययाआदेशकेविरुद्धअपीलकीजारहीहो उसआदेशकीप्रतिपरभीसमुचितमूल्यकेअदालतीटिकटलगाएजानेचाहिए। केन्द्रीय उत्पाद शुल्कअधिनियम 1944 कीसंशोधितधारा 35F केअधीन7.5% कीअनिवार्यपूर्वजमाराशिकेसाथकियाजानाचाहिएअपीलमांगकीहैयाजुर्मानालगायायादोनोंऔरदेयपूर्वज माकीगईराशि10 करोड़रुपयेकीसीमाकेअध्यधीनहोगा।

The appeal as well as the copy of the decision or order appealed against must be affixed with court fee stamp of the appropriate amount. Under Section 35 F of Central Excise Act, 1944, the appeal also must be accompanied by mandatory pre-deposit amount of 7.5% of the duty demanded or penalty imposed or both and the amount of pre-deposit payable would be subject to a ceiling of Rs.10 Crore.

**BRIEF FACTS OF THE CASE:**

M/s Greenwood Estates, 5-4-187/3&4, II Floor, Soham Mansion, MG Road, Secunderabad-500003 (hereinafter referred to as the 'assessee') are engaged in providing Works Contract Service. The assessee is a registered partnership firm and got themselves registered with the department vide Service Tax Registration bearing No.AAHFG0711BST001.

**2.1.** 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 has 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.

**2.2.** 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-GR.X dt.23.04.2011 | Rs.48,00,391/-                                    | January, 2010 to December, 2010         |
| O.R.No.52/2012-ADJ-ST dt.24.04.2012      | Rs.46,81,850/-                                    | January, 2011 to December, 2011         |

**2.3.** 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.

**2.4.** 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.

**2.5.** 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.”*

**2.6.** In view of the directions of the Hon'ble CESTAT remanding the matter, the issue is taken up again for denovo adjudication

### **ASSESSEES' REPLY& PERSONAL HEARING :**

**3.1.** Shri V.S.Sudhir, Chartered Accountant has appeared for personal hearing on 15.09.2015 on behalf of the assessee, and submitted that the show cause notice has proposed the demand for an amount received in excess of sale deed. However, the computation had covered the amount received towards the sale deed also. Further, the amount taken in computation was not matching with their books of accounts thereby leading to wrong computation of the demand. He requested to grant another 10 days time to give the documents for computation and written submission.

**3.2.** The assessee vide their letter dated 22.12.2015 have given the working of receipts and the attribution of the said receipts towards sale deed. The summary as given in their letter is reproduced below:

| Description                              | Receipts  | Non taxable | Taxable  |
|------------------------------------------|-----------|-------------|----------|
| Sum of towards sale deed                 | 40744617  | 40744617    | -        |
| Sum of towards agreement of construction | 53239887  | -           | 53239887 |
| Sum of towards other taxable receipts    | 1329697   | -           | 1329697  |
| Sum of towards VAT, Regn. charges, etc   | 11148364  | 11148364    | -        |
|                                          | 106462565 | 51892981    | 54569584 |

The assessee have further submitted the receipt details in Annexure B of their letter and submitted that once the deductions are provided to the appellants, the demand would be reduced to Nil.

### **DISCUSSION AND FINDINGS:**

**4.1.** I have carefully gone through the above referred two Show Cause Notices, Order-In-Original, Order-In-Appeal, the Final Order of the Hon'ble CESTAT and the assessee's written submissions viz.,

(i) SCN O.R.No.61/2011 dt.23.04.2011;

(ii) SCN O.R.No.52/2012 dt.24.04.2012;

(iii) OIO No.51/2012 dt.31.08.2012;

(iv) OIA No.39/2013 dt.27.02.2013;

(v) Hon'ble Tribunal's F.O.No.20401/2014 dt.25.03.2014; and

(vi) the submissions made by the assessee during the PH conducted on 15.09.2015 and written submissions dated 22.12.2015.

**4.2.** As per the directions of the Hon'ble CESTAT, the issue before me is to decide all the aspects afresh and as far as re-quantification is concerned, wherever there is no dispute, re-quantification has to be done as directed by Commissioner(Appeals) and wherever there are disputes, the matter is to be decided afresh.

**4.3.** I have carefully gone through all the records of the case. I find that these two are periodical show cause notices which have

again come for denovo adjudication as directed by the Hon'ble CESTAT.

**4.4.** As far as classification and taxability aspects of the issue are concerned, the relevant statutory provisions of the Finance Act, 1994 read –

**Section 65(91a) of the Finance Act, 1994:** *'residential complex' means any complex comprising of –*

- (i) *a building or buildings, having more than twelve residential units;*
- (ii) *a common area; and*
- (iii) *any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,*

*located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.*

**Explanation.** – *For removal of doubts, it is hereby declared that for the purposes of this clause, -*

- (a) *'personal use' includes permitting the complex for use as residence by another person on rent or without consideration;*
- (b) *'residential unit' means a single house or a single apartment intended for use as a place of residence'*

**Section 65(105)(zzzh) of the Finance Act, 1994** – *'taxable service' means any service provided or to be provided to any person, by any other person, in relation to construction of complex;*

**Explanation.-** *For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction(except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;*

**Section 65(105)(zzzz) of the Finance Act, 1994:** "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

**Explanation.**—For the purposes of this sub-clause, "**works contract**" means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
  - (ii) such contract is for the purposes of carrying out,—
    - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
    - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
    - (c) **construction of a new residential complex or a part thereof; or**
- 

**4.5.** As per the statutory provisions, I find that the assesseees are liable to pay Service Tax on the construction of residential complex undertaken by them since the above mentioned definition of residential complex service is squarely applicable and no exemption whatsoever can be allowed for such construction activity as it is not meant for self-use and 'taxable service' means any service provided or to be provided to any person by any other person in relation to construction of complex. I find that the assesseees had collected total value from the customers and entered into sale deed agreements and construction agreements simultaneously. I find that the Board vide Circular No.108/102/2009-ST dt.29.01.2009 has clarified that "if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer, who himself provides

service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because, this case would fall under the exclusion provided in the definition of residential complex. I find that the exclusion clause would apply to the complex as a whole and not to individual residential units. In other words, if the entire residential complex is meant for use by one person then it gets excluded from the definition of residential complex. However, this exclusion does not apply to individual residential units as in the instant case.

**4.6.** With regard to the demand of Service Tax and imposition of penalties, I find that the assessee had obtained Service Tax registration and paid Service Tax under Works Contract service and stopped payment of S.Tax abruptly by misinterpreting the Circular No.108/02/2009-ST dt.29.01.2009 issued by the Board even though they received taxable amounts from their customers during the said period, contravening the provisions of Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 with an intention to evade payment of duty since the clarification sought by them was negated by the department by issue of the subject show cause notices by not accepting their contention. The fact of non-payment of Service Tax had come to light only after the department conducted investigation proceedings.

**4.7.** With regard to the quantification of Service Tax demand, the assessee contended that the taxable value has not been correctly arrived at. They have submitted that VAT and other taxable expenses have not been excluded while arriving at the taxable value. I find that the assessee has submitted in their reply dated 22.12.2015 that the total receipts towards VAT, Registration charges, Stamp duty, etc., during the relevant period was Rs.1,11,48,364/-. These charges are not attributable to construction work contract and as such eligible for deduction from gross amount. However, the assessee has not submitted any proofs or evidence that the said amount of Rs.1,11,48,364/- pertains to VAT, Registration charges, Stamp duty,



etc. The assesseees have simply mentioned in their written reply dt.22.12.2015 that an amount of Rs.1,11,48,364/- pertains to VAT, Registration charges, Stamp duty, etc., and reiterated the same in the Annexure B to the letter in a tabular form without support of any evidence. Hence, I am inclined not to extend the said benefit to the assesseees. The assesseees also claimed that the amount received towards sale deed is not to be included in the gross value. This plea is not tenable as construction under works contract service is taxable on gross receipts basis and considering the scope of construction service, receipts of all amounts are liable for Service Tax, except where entire consideration is received after issue of completion certificate. As the completion certificates have not been issued by the competent authority, the amounts received as consideration towards the taxable activity of semi-finished flats are taxable.

**4.8.** The assesseees vide their reply dt.22.12.2015 have submitted that they have received a total amount of Rs.10,64,62,565/-for the said two periods viz., January, 2010 to December, 2010 and January, 2011 to December, 2011 as follows:

|                                         |                    |
|-----------------------------------------|--------------------|
| Towards sale deed                       | = Rs.4,07,44,617/- |
| Towards agreement of construction       | = Rs.5,32,39,887/- |
| Towards other taxable receipts          | = Rs.13,29,697/-   |
| Towards VAT, Registration charges, etc. | = Rs.1,11,48,364/- |

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Total = Rs.10,64,62,565/-  
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The above figures are not supported by any material evidence. The assesseees have not furnished any of their audited Balance Sheets/P & L Accounts/Ledger copies/Bank Account statements for the relevant period in support of the figures mentioned in their letter. In view of this, I am not inclined to accept the figures submitted by the assesseees in their reply dated 22.12.2015 as the said figures are without any supportive evidence. Further the figures submitted by the assesseees in respect of the same issue to various fora are inconsistent. The details of the same are discussed below.

- (i) As per Para 10 of the assessee's written submissions dt.16.08.2012 before the original adjudicating authority (Addl.Commr.) in respect of proceedings under SCN O.R.No.61/2011 (Jan'10 to Dec'10) and as per Para 26 of the assessee's written submissions dt.15.06.2012 before the original adjudicating authority (Addl.Commr.) in respect of proceedings under SCN O.R.No.52/2012 (Jan'11 to Dec'11), **the amounts** said to have been **received by them** during the relevant period and as submitted by the assessee are given below.

|                                                                                                                                                                                                                                                                                                                                                                                                         | Description of amounts received towards various heads              | Amounts received by the assessee during Jan'10 to Dec'10 | Amounts received by the assessee during Jan'11 to Dec'11 | <b><u>Total amount received</u></b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------|-------------------------------------|
| As per Para 10 of the assessee's written submissions dt.16.08.2012 before the original adjudicating authority (Addl.Commr.) in respect of proceedings under SCN O.R.No.61/2011 (Jan'10 to Dec'10) and As per Para 26 of the assessee's written submissions dt.15.06.2012 before the original adjudicating authority (Addl.Commr.) in respect of proceedings under SCN O.R.No.52/2012 (Jan'11 to Dec'11) | <b><u>Amt. received</u></b> towards the sale deed                  | 36612000                                                 | 43626000                                                 | 80238000                            |
|                                                                                                                                                                                                                                                                                                                                                                                                         | <b><u>Amt. received</u></b> towards taxes and other charges        | 12993000                                                 | 10070537                                                 | 23063537                            |
|                                                                                                                                                                                                                                                                                                                                                                                                         | <b><u>Amt. received</u></b> towards Construction Agreement charges | 57306000                                                 | 59940694                                                 | 117246694                           |
|                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Total</b>                                                       | <b>106911000</b>                                         | <b>113637231</b>                                         | <b>220548231</b>                    |

- (ii) As per Para 32 & 33 (page 20 & 21) of the assessee's written submissions made before the Commr(Appeals) in respect of the proceedings under OIO No.51/2012 dt.31.08.2012, the assessee submitted that they have **received** the following amounts as given below.

|                                                                                                                                                                          | Description of amounts received towards various heads       | Amounts received by the assesseees during Jan'10 to Dec'10 | Amounts received by the assesseees during Jan'11 to Dec'11 | <u>Total amount received</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|------------------------------|
| As per Para 32 & 33(page 20 & 21) of the assesseees' written submissions made before the Commr(Appeals) in respect of the proceedings under OIO No.51/2012 dt.31.08.2012 | <u>Amt. received</u> towards the sale deed                  | 36612000                                                   | 43626000                                                   | 80238000                     |
|                                                                                                                                                                          | <u>Amt. received</u> towards taxes and other charges        | 12993880                                                   | 10070537                                                   | 23064417                     |
|                                                                                                                                                                          | <u>Amt. received</u> towards Construction Agreement charges | 57306355                                                   | 59940604                                                   | 117246959                    |
|                                                                                                                                                                          | <b>Total</b>                                                | <b>106912235</b>                                           | <b>113637141</b>                                           | <b>220549376</b>             |

(iii) As per Para 3 & 4 (page 68) of the assesseees' written submissions made before the Hon'ble CESTAT in respect of proceedings under Order-In-Appeal No.39/2013 dt.27.02.2013, the assesseees submitted that they have **received** the following amounts as given below.

|                                                                                                                                                                            | Description of amounts received towards various heads       | Amounts received by the assesseees during Jan'10 to Dec'10 | Amounts received by the assesseees during Jan'11 to Dec'11 | <u>Total amount received</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|------------------------------|
| As per Para 3 & 4 (page 68) of the assesseees' written submissions made before the Hon'ble CESTAT in respect of proceedings under Order-In-Appeal No.39/2013 dt.27.02.2013 | <u>Amt. received</u> towards the sale deed                  | 36612000                                                   | 10070537                                                   | 46682537                     |
|                                                                                                                                                                            | <u>Amt. received</u> towards taxes and other charges        | 12993880                                                   | 6611038                                                    | 19604918                     |
|                                                                                                                                                                            | <u>Amt. received</u> towards Construction Agreement charges | 57306355                                                   | 59940604                                                   | 117246959                    |
|                                                                                                                                                                            | <b>Total</b>                                                | <b>106912235</b>                                           | <b>76622179</b>                                            | <b>183534414</b>             |

Thus it can be seen that the assesseees have stated/submitted **before the Commissioner(Appeals)**that **they had received an amount of Rs.4,36,26,000/-** towards sale deed for the period Jan'11 to Dec'11. However, the assesseees have stated/submitted **before the Hon'ble Tribunal** that **they had received only Rs.1,00,70,537/-** towards the sale deed for Jan'11 to Dec'11. Similarly, the assesseees have submitted before the Hon'ble Tribunal that they had received Rs.66,11,038/- towards Taxes and other charges for the period Jan'11 to Dec'11 and have however submitted before the

Commissioner(Appeals) that they had received an amount of Rs.1,00,70,537/-towards the same for the same period. Further, from the above, it can be clearly seen that the assesseees have submitted that they have **received a total amount** during the said period covering the two SCN's (i.e., Jan'10 to Dec'11) **as Rs.22,05,49,376/- (submitted before the Commr(A), as Rs.18,35,34,414/-(submitted before the Hon'ble CESTAT)**. Now, the assesseees, in their latest reply dt.22.12.2015 have stated that they had received a total amount of **Rs.10,64,62,565/-** only for the two periods i.e., from January, 2010 to December, 2011(submitted to the present adjudicating authority vide their letter dt.22.12.2015). I find that the assesseees have misrepresented the quantum of amounts received before various authorities. The gross receipt of amounts during Jan'10 to Dec'11 was a matter of fact. However, it appears that the assesseees during their submissions before various authorities have misrepresented the fact of quantum of receipts. Once the amounts are received in a previous period (in this case for the period Jan'10 to Dec'11) the factum of quantum of amount received cannot change. The fact of the quantum of amounts said to have been **received** during the two periods Jan'10 to Dec'10 and Jan'11 to Dec'11 cannot obviously change during the Show Cause Notices issuance time, during the time of submissions made before the Commissioner(Appeals), again during the time of submissions made before the Hon'ble CESTAT and then again now i.e., on 22.12.2015. A confusion or a mis-calculation in respect of change of heads under which the amounts were received can be understood. But, the fact of gross quantum of amount received has to be the same before any authority. It obviously cannot change over a period of time before various authorities. In view of the above and as the assesseees have not furnished any of their audited Balance Sheets/P & L Accounts/Ledger copies/Bank Account statements/VAT returns/Registration charges challans for the relevant period in support of the figures claimed/mentioned in their letter dt.22.12.2015, I am not inclined to accept the figures submitted by the assesseees vide their letter dt.22.12.2015.

**4.9.** Penalty is a preventive as well as a deterrent measure to defeat recurrence of breach of law and also to discourage non-compliance of the law. The issue of imposing penalty under Section was already discussed in the original Order-In-Original and the Commissioner(Appeals) has confirmed the penalty under Section 76 and has however waived penalty under Section 77 of the Finance Act, 1994. Thus I find that the assesseees are liable for imposition of penalty under Section 76 of the Finance Act, 1944.

**5.** In view of the above, I pass the following Order :

**ORDER**

**(a)** In respect of Show Cause Notice O.R.No.61/2011-Adjn(ST) dt.23.04.2011:

- (i)** I confirm the demand of Service Tax of Rs.48,00,391/- (including cesses) (Rupees Forty Eight Lakhs Three Hundred And Ninety One Only) for the period January, 2010 to December, 2010 under Section 73(2) of the Finance Act, 1994 against M/s Greenwood Estates.
- (ii)** I order for recovery of interest at the stipulated rate(s), on the Service Tax amount as demanded at S.No.(a)(i) above, in terms of Section 75 of the Finance Act, 1994 from M/s Greenwood Estates.
- (iii)** I impose a penalty of Rs.200/- per day or 2% of such Service Tax per month whichever is higher, for the period of default till the date of payment of Service Tax under Section 76 of Finance Act, 1994 on M/s Greenwood Estates. However, the total amount of penalty payable in terms of Section 76 shall not exceed the Service Tax payable.

**(b)** In respect of Show Cause Notice O.R.No.52/2012-Adjn(ST) dt. 24.04.2012:

- (i)** I confirm the demand of Service Tax of Rs.46,81,850/- (including cesses) (Rupees Forty Six Lakhs Eighty One Thousand, Eight Hundred And Fifty Only) for the period



January, 2011 to December, 2011 under Section 73(2) of the Finance Act, 1994 against M/s Greenwood Estates.

(ii) I order for recovery of interest at the stipulated rate(s), on the Service Tax amount as demanded at S.No.(b)(i) above, in terms of Section 75 of the Finance Act, 1994 from M/s Greenwood Estates.

(iii) I impose a penalty of Rs.200/- per day or 2% of such Service Tax per month whichever is higher, for the period of default till the date of payment of Service Tax for the period upto 07.04.2011 and Rs.100/- per day or 1% of such Service Tax per month whichever is higher, for the period of default till the date of payment of Service Tax for the period from 08.04.2011 under Section 76 of Finance Act, 1994 on M/s Greenwood Estates.

  
(P. ANAND KUMAR)  
ADDITIONAL COMMISSIONER

To

M/s Greenwood Estates  
5-4-187/3 & 4, II Floor,  
Soham Mansion, M.G.Road,  
Secunderabad-500003.

(By Speed Post)

Copy submitted to the Principal Commissioner/Commissioner, Service Tax Commissionerate, Hyderabad.

Copy to:

1. The Assistant Commissioner of Service Tax, Division-II, Service Tax Commissionerate, Hyderabad.
2. The Superintendent of Service Tax, Service Tax Range-IIA, Service Tax Commissionerate, Hyderabad **with a direction to serve the order on the assesseees and submit a copy of dated acknowledgement.**
3. Office copy/ Master copy/ Spare copy.