



**Hiregange
& Associates LLP**
Chartered Accountants



Date: 15.02.2023

To
Assistant Registrar,
Customs, Central Excise and Service Tax Appellate Tribunal,
1st Floor, Rear Portion of HMWSSB,
Khairatabad, Hyderabad - 500 004.

Dear Sir,

Sub: Filing of Appeal to Appellate authority in Form ST-5.

Ref: Order-In-Appeal No. HYD-SVTAX-SC-AP2-062-22-23 (APP-II) dated 31.10.2022 pertaining to M/s. Greenwood Estates.

1. We have been authorized by M/s. Greenwood Estates to submit an appeal to the above referred Order-in-Appeal No. HYD-SVTAX-SC-AP2-062-22-23 (APP-II) dated 31.10.2022 and represent before this Hon'ble CESTAT and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the appeal.
2. In this regard, we are herewith submitting the appeal in Form ST-5 along with authorization letter and other annexures referred in the appeal along with this letter.
3. We have also attached the Demand Draft No.905529 dated 03.02.2023 for an amount of Rs.10,000 towards appeal fees.

We shall be glad to provide any other information in this regard.

Thanking You,

Yours faithfully,

For M/s. Hiregange & Associates LLP
Chartered Accountants


CA Venkata Prasad
Partner



4th Floor, West Block, Srida Anushka Pride, Beside SBI Bank, Above Lawrence & Mayo store,
Road Number 12, Banjara Hills, Hyderabad, Telangana - 500 034, INDIA.

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Index

Sl.No.	Particulars	Annexure	Page Nos.
1	Form ST - 5		01-03
2	Statement of Facts		04-09
3	Grounds of Appeal		10-26
4	Authorization		26A
5	Pre-deposit Affidavit	I	26B
6	Copy of challans enclosed	II	27-29
7	Copy of Order-In-Appeal No. HYD-SVTAX-SC-AP2-062-22-23 (APP-II) dated 31.10.2022	III	30-36
8	Copy of ST-4	IV	37-50
9	Order in Original (Denovo) No. 05/2021-22-SEC-ADJN-ADC (ST) dated 26.7.2021	V	51-68
10	Copy of E-mail dated 09.06.2021 and 18.06.2021	VI	69-69
11	Copy of letter dated 23.07.2021	VII	70-70
12	Copy of letter dated 29.6.2021	VIII	71-72
13	Copy of Order-in-Appeal HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018	IX	73-83
14	Copy of submissions in previous ST-4 from Para 3 to Para 67	X	84-129
15	Copy of OIO No. 83/2016-Adjn(ST)(ADC) dated 09.06.2017	XI	130-143
16	SCN dated 23.04.2011	XII	144-147
17	SCN dated 24.04.2012	XIII	148-152
18	Copy of submissions made in ST-5 in Appeal No. ST/31034/2018	XIV	153-175
19	sample copies of ledger accounts of the customers	XV	176-182
20	Order in Original No. 51/2012-Adjn (ST) ADC dated 31.8.2012	XVI	183-194

YES BANK

YES BANK LTD.

YES BANK House,
Off Western Express Highway,
Santacruz East, Mumbai - 400055
Tel No. : 022 5081 9800/022 6507 9800
Fax No: 022 26192866

DEMAND DRAFT

VALID FOR THREE MONTHS FROM DATE OF ISSUE

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A/C. PAYEE / Non-Negotiable

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On Demand Pay

ASSISTANT REGISTRAR CESTAT

or Order

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Rupees

TENTHOUSAND ONLY**

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₹

10,000.00*

Purchaser Name: GREENWOOD ESTATES

For YES BANK LTD.



YES BANK LTD

DRAWEE BANK AND BRANCH SOMAIGUDA HYDERABAD



ISSUING BANK AND BRANCH BEGUNPET SECUNDRABAD

Chandru
6/2/2023
6/2/2023
AUTHORISED SIGNATORY(IES)

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03/02/2023

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, CENTRAL EXCISE & SERVICE TAX APPELLATE TRIBUNAL: HYDERABAD

APPEAL No. ST/..... of 2023

Between:

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



Vs.

**The Principal Commissioner of Central Tax,
Secunderabad GST Commissionerate,
GST Bhavan,
Opp. L B Stadium Road,
Hyderabad -500 004**

..... Respondent

01(a)	Assessee Code	AAHFG0711BST001
(b)	Premises Code	-
(c)	PAN or UID	AAHFG0711B
(e)	E-mail Address	jayaprakash@modiproperties.com
(f)	Phone Number	9553919781
(g)	Fax Number	-
02.	The Designation and Address of the Authority passing the Order Appealed against.	Commissioner of GST & Central Tax (Appeals- II) Commissionerate. GST Bhavan ,7 th Floor, Opp. L.B Stadium, Basheerbagh, Hyderabad - 500 004
03.	Number and Date of the Order appealed against	Order-In-Appeal No. HYD-SVTAX-SC-AP2-062-22-23 (APP-II) dated 31.10.2022
04.	Date of Communication of a copy of the Order appealed against	22.12.2022
05.	State or Union Territory and the Commissionerate in which the order or decision of assessment, penalty, was made	Telangana, Secunderabad GST Commissionerate
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	No
07.	Designation and address of the adjudicating authority in case where the order appealed against is an order of the Commissioner (Appeals)	Additional Commissioner of Central Tax & Central Excise, Secunderabad Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.



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08.	Address to which notices may be sent to the appellant	M/s. Hiregange & Associates LLP, Chartered Accountants, 4 th Floor, West Block, Srida Anushka Pride, Road No. 12, Banjara Hills, Hyderabad - 500 034 venkataprasad@hiregange.com 8978114334 (And also copy to the Appellant)
09.	Address to which notices may be sent to the Respondent	The Principal Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, Opp. L B Stadium Road, 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'	No
12.	Period of Dispute	Jan'10 to Dec'10 and Jan'11 to Dec'11
13(i)	Amount of service tax, if any Demanded for the period of dispute	Rs. 45,81,201/- for the period Jan'10 to Dec'10 and Rs. 44,65,371/- for the period Jan'11 to Dec'11 u/s 73(2) of the Finance Act, 1994
(ii)	Amount of interest involved up to the date of the order appealed against	As applicable u/s 75 of the Finance Act, 1994
(iii)	Amount of refund if any, rejected or disallowed for the period of dispute	NA
(iv)	Amount of penalty imposed	Rs. 4,58,120/- for the period Jan'10 to Dec'10 and Rs. 4,46,537/- for the period Jan'11 to Dec'11 u/s 76 of the Finance Act, 1994 and Rs. 10,000/- Section 77 of the Finance Act, 1994.
14(i)	Amount of service tax or penalty or Interest deposited. If so, mention the amount deposited under each head in the box.	An amount of Rs. 47,80,786/- has been already paid, through CENVAT Rs.24,29,887/- and through cash of Rs.23,50,899/-. The same can be adjusted towards mandatory pre-deposit in terms of section 35F of Central Excise Act, 1944 as required (Copy of challans enclosed as Annexures <u>11</u>).
(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., iv) Export of Services v) Import of Services vi) Point of Taxation vii) CENVAT viii) Refund ix) Valuation x) Others]	(i) Taxability (ii) Others
18.	Central Excise Assessee Code, if registered with Central Excise	Not Applicable
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), the Number of Order-in-original covered by the said Order-in-Appeal.	Order (DE NOVO) NO: 05/2021-22-SEC-ADJN-ADC(ST) dated 26.07.2021
21.	Whether the respondent has also filed Appeal against the order against which this appeal is made.	No. As per knowledge of the Appellant
22.	If answer to serial number 21 above is 'Yes', furnish details of appeal.	No
23.	Whether the appellant wishes to be Heard in person?	Yes. At the earliest convenience of this Hon'ble Tribunal.
24.	Reliefs claim in appeal	To set aside the impugned order and grant the relief claimed.



[Handwritten Signature]
Signature of the Appellant

STATEMENT OF FACTS

- A. M/s. Greenwood Estates (hereinafter referred to as 'Appellant') is mainly engaged in the sale of residential houses to prospective buyers while the units are under construction. For the said purpose, the Appellant enters into two separate agreements with their customers one is for sale of undivided portion of land together with semi-finished flat (sale deed) and another one is construction agreement for undertaking construction. Sale deed is registered, and appropriate 'Stamp Duty' has been discharged on the same.
- B. The details of amounts received from customers is as follows.

Jan 2010 to Dec 2010			
Description	Receipts	Non-taxable	Taxable
Sum towards sale deed	Rs.4,07,44,617	Rs.4,07,44,617	Nil
sum towards agreement of Construction	Rs.5,32,39,887	Nil	Rs.5,32,39,887
Sum towards other taxable receipts	Rs.13,29,697	Nil	Rs.13,29,697
Sum towards VAT, Regn. charges, etc	Rs.1,11,48,364	Rs.1,11,48,364	Nil
Total	Rs.10,64,62,565	Rs.5,18,92,981	5,45,69,584
Jan 2011 to Dec 2011			
Description	Receipts	Non taxable	Taxable
Sum towards sale deed	Rs.4,28,44,626	Rs.4,28,44,626	Nil
Sum towards agreement of Construction	Rs.5,50,55,881	Nil	Rs.5,50,55,881
Sum towards other taxable receipts	Rs.11,40,800	Nil	Rs.11,40,800
Sum towards VAT, Regn. charges, etc	Rs.96,23,950	Rs.96,23,950	Nil
Total	Rs.10,86,65,257	Rs.5,24,68,576	Rs.5,61,96,681

- C. The approximate liability for the impugned period are as follows (Approx):

Particulars	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011
Gross receipts	10,64,62,565	10,86,65,257
Less: Amounts received for the period January 2010 to June 2010	4,71,37,873	Not Applicable
Amount received during the period July 2010 to December 2010	5,93,24,692	Not Applicable
Less: Sale Deed value	4,07,44,617	4,28,22,626
Less: VAT, Registration Charges and other non-taxable receipts	1,11,48,364	96,23,950
Taxable Value	74,31,711	5,62,18,681
ST Liability @4.12%	3,06,186	23,16,210



Total Service tax payable	26,22,396
Service Tax paid	47,80,786
Payable/(Excess paid)	(21,58,390)

- D. As seen from the above table, an amount of Rs. 47,80,786/- has already paid towards service tax on the amounts received from customers against the liability of Rs. 26,22,396/- resulting in excess payment of Rs. 21,58,390/-.
- E. The levy of service tax on above arrangements has seen a fair share of litigation and amendments. In 2009, there was no clarity on whether service tax was payable or not. However, the Appellant chose to pay service tax under protest on the amount received towards the "construction agreement" on the basis of law as understood by them. Thereafter, based on Circular No. 108/2/2009 ST dated 29.01.2009, the Appellant believed that service tax was not payable and therefore discontinued payment of service tax on the said "Construction agreements".
- F. As Appellant has stopped making payment of Service Tax, the Anti Evasion department initiated the proceedings against the Appellant and various statements were recorded. In the above context, a Show Cause Notice (SCN) dated 21.05.2010 for the period from January 2009 to December 2009("First SCN") was issued against the Appellant.
- G. Subsequently, periodical SCN's dated 23.04.2011 & dated 24.04.2012 ("Second SCN& Third SCN") was issued for the period from January 2010 to December 2010 and January 2011 to December 2010 (copies enclosed as **Annexure XII & XIII**). The said SCN's were issued alleging that:

"As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi-finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by assessee thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in



execution of said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "works contract service"

- H. The aforesaid Show Cause Notices were adjudicated vide a common Order-in-Original No.51/2012-Adjn (ST)(ADC) dated 31.08.2012 wherein vide Para 17 of the impugned Order stated as follows

"Various flats have been sold by them to various customers in two states. First, they have executed a sale deed at semi finished stage by which the ownership of the semi-finished flats was transferred to the customer. Appropriate stamp duty was paid on the sale deed value. No service tax been demanded on the sale deed value in light of Board Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

- I. From the above Para, it is clear that the OIO dated 31.08.2012 accepted that service tax was not demanded on sale deed value, however, OIO dated 31.08.2012 erred while quantifying the demand as it has included the amounts received towards Sale deeds also.
- J. Appellant has filed an Appeal before the Commissioner (Appeals) against the said order along with stay application. The Commissioner (Appeals) vide Order-in-Appeal No.39/2013 (H-II) S. Tax dated 27.02.2013 did not agree on the contentions of personal use but he did find merit in the Appellant plea of re-quantification and therefore remanded the matter back to the Original Authority to re-quantify the value of taxable services after verification of the details.
- K. Against the above referred OIA, Appellant has filed an appeal before CESTAT and CESTAT vide Final Order No.20401/2014 in ST/Stay/27332/2013 in ST/27017/2013-DB dated 25.03.2014 stated as follows

"It was submitted by the both sided that the issue is not only re-quantification but also verification of certain facts and aspects of law which have already been confirmed by Commissioner (appeals). Instead of going into issue which will result in a decision on a part of appeal, we consider i

appropriate that the litigation should be merged into one rather than having separate parallel litigation 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 to show cause notice and also under take re-quantification as directed by the 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 remind the matter without allowing appellant to present their case again on the aspects which have 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 a fresh and pass a well-reasoned order, as far as re-quantification is concerned whenever there is no dispute. The re-quantification can be done as directed by Commissioner (appeals). Whatever there are dispute the matter can be decided by adjudicating authority, by passing a well reasoned and detailed order. It is made clear that the amounts already deposited need not refunded just because the impugned order has been set aside till the issue is decided."

- L. Subsequently, the adjudicating authority has granted personal hearing wherein the authorized representative requested 10-day time to give the documents for computations and written submissions.
- M. The Appellant vide its letter dated 22.12.2015 has given working of receipts and the attribution of the said receipts towards sale deeds, construction agreements and other non-taxable receipts. The details were submitted along with copies of agreements, financial statements and ledger copies.
- N. The Additional Commissioner has passed OIO No. 83/2016-Adjn(ST)(ADC) dated 09.06.2017 re-confirming the demand and rejected the submissions for re-quantification citing that documents were not properly submitted (Copy of OIO is enclosed as **Annexure X**).
- O. Appellant has filed an appeal before Commissioner (Appeals-II) (Copy of ST-4 is enclosed as **Annexure IV**) and appeared for personal hearing on 15.03.2018.
- P. Subsequently, Appellant received Order-in-Appeal HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018 (Copy of OIA is enclosed as



Annexure (K) confirming a part of the demand and remanded back for re-quantification. The Appellant has filed an appeal against the above referred order before CESTAT, Hyderabad to the extent aggrieved vide Appeal No. ST/31034/2018-DB and the same is pending for disposal.

Q. Meanwhile, the adjudicating authority has initiated the remand proceedings and scheduled the personal hearing. Despite of requesting to keep the proceedings in abeyance till the disposal of appeal by CESTAT, the Additional Commissioner of Central Tax vide Order (De Novo) No. 05/2021-22-SEC-ADJN-ADC(ST) dated 26.07.2021 has passed an order confirming the demand which is as follows:

(a) In respect of Show cause notice O.R. No.61/2011-Adjn.(ST) dated 23.04.2011

- a. I confirm the demand of an amount of Rs 45,81,201/- (including Cess) [Rupees Forty-Five Lakh Eighty-One Thousand Two Hundred and One only] being the Service Tax payable on the taxable services rendered during the period from January 2010 to December 2010, in terms of sub-section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad.
- b. in terms of Section 75 of the Finance Act, 1994, I order M/s.Greenwood Estates to pay interest at appropriate rates, on the Service Tax payable as mentioned at Sl. No. (i) above.
- c. I impose a penalty of Rs.4,58,120 /- [Rupees Four Lakh Fifty-Eight Thousand One Hundred and Twenty only] (being 10% of the ST payable) on M/s.Greenwood Estates, Hyderabad, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax.
- d. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s Greenwood Estates, Hyderabad, under Section 77 of the Finance Act, 1994, for failure to declare the right taxable incomes in their ST-3 return.

(b) In respect of Show cause notice O.R.No.52/2012-Adjn. (ST) dated 24.04.2012

- a. I confirm the demand of an amount of Rs 44,65,371/- / - (including Cess) [Rupees Forty Four lakh Sixty Five Thousand Three Hundred and Seventy One only] being the Service Tax payable on the taxable services rendered during the period from January 2011 to December 2011, in terms of sub-section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad.



- b. In terms of Section 75 of the Finance Act, 1994, I order M/s Greenwood Estates to pay interest at appropriate rates, on the Service Tax payable as mentioned at Sl. No. (i) above.
- c. I impose a penalty of Rs.4,46,537/- [Rupees Four Lakh Forty Six Thousand Five Hundred and Thirty Seven only 1 (being 10% of the ST payable) on M/s. Greenwood Estates Hyderabad, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax.
- d. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s.Greenwood Estates, Hyderabad, under Section 77 of the Finance return.
- R. Aggrieved by the above order, Appellant filed an Appeal against the above referred order before Commissioner of Central tax (Appeals-II), Hyderabad who passed impugned order vide Order-In-Appeal No. HYD-SVTAX-SC-AP2-062-22-23 (APP-II) dated 31.10.2022 upholding the Order-in-Original (Copy of Order-in-Appeal is enclosed as **Annexure** ).

Aggrieved by impugned order, which is contrary to facts, law, and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Appellant prefers this appeal on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.



GROUND OF APPEAL

1. 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. Without prejudice to any other submissions made hereunder, the Appellant submits that the first appellate authority failed to give any finding on the submission that present proceedings and the issuance of the impugned Order in Original were without authority of the law as the provisions of the Finance Act, 1994 which authorizes the levy and collection of Service tax were repealed in terms of Section 19 of Constitution (one hundred and first amendment) Act, 2016 read with Section 173 of CGST Act, 2017. Further section 174 of CGST Act, 2017 as amended only saves the proceedings already instituted before the enactment of the CGST Act, 2017 (w.e.f. 01.07.2017) whereas the issuance of the impugned SCN was initiated after 01.07.2017. The impugned order passed should be set aside on this ground alone.

In Re: Impugned Order is not valid

3. Appellant submits that various submissions on facts and law were made before the Ld. Appellate authority which were neither accepted nor negated. Hence, the impugned order being non-speaking, should be set aside on this ground alone.
4. Appellant submits that with due respects, the impugned order is passed without appropriately considering the nature of the activity, the perspective of the same, documents on record, but creating **its own assumptions**, presumptions and surmises, ignoring the statutory provisions. Supreme Court in the case of **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)** has held that such orders are not sustainable under the law.
5. The issue is no more res integra in view of the order passed by this Hon'ble CESTAT, Hyderabad in the Appellants own case for the period April 2014 to March 2015 vide Final Order No. A/31078/2019 dated 19.11.2019



[Handwritten Signature]

where the Hon'ble CESTAT remanding the matter to adjudicating authority directed the adjudicating authority to re-quantify the demand after excluding the value of sale deed by considering the allegations made in the Show Cause Notice.

In Re: Re-quantification of demand

6. Appellant at the outset is contesting the demand of service tax and other aspects in the above referred OIA dated 27.04.2018 which has remanded the matter to lower authority *inter alia* that;
 - a) There is no service tax liability on the builder during the period prior to 01.07.2010;
 - b) The 'sale deed' value shall be excluded while arriving the taxable value;
 - c) Amount received towards registration charges, stamp duty etc., shall be excluded while arriving the taxable value;

Accordingly, Appellant has filed an appeal before Hon'ble CESTAT, Hyderabad vide appeal No. ST/31034/2018 which is pending for disposal. As the same OIA is already appealed before the Hon'ble Tribunal, Appellant humbly requests this Hon'ble CESTAT, Hyderabad to tag the present appeal with above appeal.

7. Appellant further submits that most of the submissions made in the appeal with regards to re-quantification were not properly appreciated while passing the impugned order. The following submissions are once again reproduced hereunder:

- i) Without prejudice to above, Appellant submits that the Order-in-Appeal which has remanded the matter to lower authority vide Para 12, set side para 5(a)(i) and 5(b)(i) OIO No. 83/2016-Adjn(ST)(ADC) dated 09.06.2017 and directed to examine the following:

- a. *Examine the evidence presented in the CD regarding the appellants residential unit-wise liability under the composition scheme.*



[Handwritten signature]

- b. *The elements of VAT (if any), and value of goods whose title stands transferred as sale alone is excludible, the same may be excluded*
 - c. *Registration charges/ stamp duty are not excluded in the composition scheme, hence includible for assessment to WCS; 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 composition scheme;*
 - d. *There is a force in the contention that the electricity/ water charges are collected and paid to the utilities for the corresponding services; that the same represent reimbursable expenses out of the ambit of the levy, as settled by the Apex court in the UNION OF INDIA Vs INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT LTD [2018 (10) G.S.T.L 401 (S.C)]; therefore I hold that the same shall be excluded from the assessment of tax; and that cum-tax benefit shall be extended under sec 67(2) on the values included from the sale deed.*
- ii) *Consequent to above referred remand directions, Appellant has filed the remand submissions submitting the details of amounts collected towards VAT, water and electricity charges (other non-taxable receipts). In this regard, Appellant submits that the Order in Original No. 83/2016 has vide Para 5.5 has given a finding that "the assessee has not provided any worksheets to show that how he has arrived at the quantification for deductions as tabulated by him in written submissions. Since there is no basis for the tabulation made by the assessee, I decide to go with the department's quantification as I has taken the date made available by the assessee as the basis for arriving at the above amounts. As directed by Commissioner (Appeals) the aforesaid amounts in the foregoing table is liable for deduction from the gross receipts. Accordingly, I hold that Rs. 15,27,926/- is liable for deduction from the gross receipts"*



iii) In this regard, Appellant submits that Order in Appeal upholding Order in Original is not correct in as much as the Appellant has submitted all the details during the remand proceedings. Appellant submits that the following information has been submitted by the Appellant though E-mail on 09.06.2021 and 18.06.2021 (Copy of E-mail is enclosed as **Annexure VI**).

- (a) Statement showing the Customer wise receipts along with details of amounts received before receipt of Occupancy Certificate and after receipt of Occupancy Certificate
- (b) Copies of Income Tax returns for the financial years 2015-16, 2016-17 and 2017-18

iv) Subsequently, Appellant has also submitted the copies of sale deeds, agreement of construction and sale ledgers in a CD format to the concerned inspector. To this extent, Appellant vide letter dated 29.06.2021 has stated that the above referred information was submitted and requested to confirm the same. Further, Appellant has also requested the adjudicating authority that Appellant is ready to submit any information as required. However, the Appellant has not received any request from the department requesting any information (Copy of letter dated 29.06.2021 is enclosed as **Annexure VII**).

v) Appellant further submits that Appellant vide its letter dated 23.07.2021 has submitted the following information in a pen drive

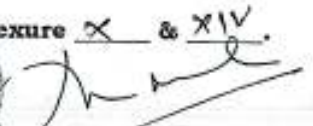
- (a) Sale deed copies entered with the customers during 01.01.2010 to 31.12.2011
- (b) Agreement of Construction entered with the customers during 01.01.2010 to 31.12.2011
- (c) Ledger accounts of the customers & (Copy of letter dated 23.07.2021 is enclosed as **Annexure VIII**).



- vi) Appellant submits that the amount of VAT collected from the customers can be evidenced from the VAT challan enclosed to the Sale deed copies submitted vide above referred letter dated 23.07.2021. Further, the details of the Appellant submit that all the above shows that the Appellant has submitted the entire information to the department, therefore the findings of the Order in Appeal upholding Order in Original is not correct.
- vii) Further, Appellant submits that the Order in Original which was upheld by the Order in Appeal has considered only the below amounts as VAT and other Non-taxable receipts while re-quantifying the demand as against the actual amounts;

Particulars	Jan'10 to Dec'10	Jan'11 to Dec'11	Total
VAT Charges	6,66,565	7,43,084	14,09,649
Electricity and water charges	72,379	45,898	1,18,277
Total	7,38,944	7,88,982	15,27,926

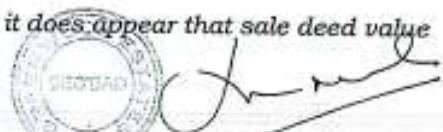
- viii) To evidence that the Appellant has received the amounts as stated in the remand proceedings, Appellant again submitted receipt wise statement along with copy of sale deed as a proof for VAT amount and ledger accounts of the customers with respect to water and electricity charges as a proof. This shows that the amounts considered by impugned order which culminated in OIA is not valid and needs to be set aside.
- ix) Since the Appellant is in appeal before CESTAT which is pending vide Appeal No. ST/31034/2018 against the service tax demand confirmed by Order-in-Appeal on amounts received prior to 01.07.2010 and amounts received towards sales deed, registration charges, Appellant would like to re-iterate the submissions in previous ST-4 from Para 3 to Para 67 and the submissions made in ST-5 in Appeal No. ST/31034/2018 which are enclosed as Annexure X & XIV.

In Re: Without prejudice to the above submissions, the following submissions are made which are independent pleas viz., No Service tax on sale of semi-finished flat:

8. Appellant submits that from the plain reading of the impugned SCN it is clear that the subject SCN itself admitted the fact that *only services rendered by the Appellant after execution of sale deed against agreements of construction to each of their customers* is liable for service tax under works contract service *qua* accepted that service tax is not applicable for the sale of semi-finished flat. Despite of this admittance in SCN while quantifying the demand has considered the total gross receipts which also includes the amount received for sale of semi-finished flat. On the basis of the same, Appellant submits that the proposition of the subject show cause notice demanding service tax on sale of semi-finished flat is not sustainable and thereby the impugned Order in Original and Order in Appeal so passed on the basis of such notice needs to be set aside.
9. Appellant submits that this Hon'ble CESTAT, Hyderabad in the Appellants own case for the period April 2014 to March 2015 (Final Order No. A/31078/2019 dated 19.11.2019 has remanded the matter to adjudicating authority directing the adjudicating authority to re-quantify the demand after excluding the value of sale deed by considering the allegations made in the Show Cause Notice. The relevant extract is as follows

"7. We have considered the arguments on both sides and perused the records. There is no dispute that the show cause notice demanded service tax only on the amounts received after sale has been completed. Therefore, the amounts received towards sale deed were supposed not to have been included in the demand. However, prima facie, looking at the annexure to the SCN and the table presented before us by the learned CA as well as the reply to RTI query received by him, it does appear that sale deed value



has been included while computing the demand and confirming it. Since the dispute is only regarding the computation of the demand and not on any specific point of law, we think it is a fit case to be remanded to the original authority to recalculate the demand after excluding the sale deed value"

10. Further, in an identical case the Hon'ble Jurisdictional CESTAT, in the case of Paramount Builders vs. Commr. Of Central Tax, vide Final Order No. A/30704/2019 dated 22.10.2019 has also clearly held that Sale deed value should be deducted while computing the service tax as it represents sale of immovable property.
11. Further, in another identical case the Hon'ble Jurisdictional CESTAT, in the case of M/s. Alpine Estates vs. vs. Commr. Of Central Excise, vide Final Order No. A/30699/2019 dated 22.10.2019 and Miscellaneous Order No. M/30226/2022 dated 11.3.2022 has once again clearly held that Sale deed value should be deducted while computing the service tax as it represents sale of immovable property.

From all these decisions, it is clear that there is no requirement to pay service tax on sale deed values. Thereby, the impugned order needs to be set aside.

12. Without prejudice to above, Appellant submits that the sale of semi-finished flat is **transfer of immovable property which is not leviable to service tax**. In the present case, the agreement of sale deed is entered for sale/register of semi-finished flat which is an immovable property. Accordingly, the amount received for sale of semi-finished flat is not liable to service tax.
13. Appellant further submits that there is no service tax levy on sale of semi-finished flat as the same was excluded from the definition of 'service' u/s. Section 65B(44) of Finance Act, 1994 ("Transfer of title in goods or immovable property, by way of sale").



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14. Appellant further submits that value of 'agreement of sale' consists of two parts namely 'undivided portion of land' and 'semi-finished flat'. The semi-finished flat represents the construction work already done prior to booking of flat by the prospective buyer. The work undertaken till that time of entering 'AOS' is nothing but work done for self as there is no service provider and receiver. It is settled law that there is no levy of service tax on the self-service and further to be a works contract, there should be a contract and any work done prior to entering of such contracts cannot be brought into the realm of works contract. In this regard reliance is placed on the following:

- a) Apex court judgment in Larsen and Toubro Limited v. State of Karnataka — 2014 (303) E.L.T. 3 (S.C.): **"115. It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government."**
- b) **Jurisdictional CESTAT decisions in case of Modi & Modi Construction Vs CCE, Hyderabad -II 2021 (45) GSTL 398 (Tri-Hyd) wherein it was held that "11. The second question is the nature of the contract on which service tax is proposed to be charged. The SCN itself states that the plots along with semi-finished buildings were sold to the buyers under the sale agreement. Thereafter, a separate agreement was entered into with the individual home owners for completion of the building/structure as per the agreement. In other words, there is no agreement for completion of the entire complex but there are a number of agreements with each individual house owner for completion of their building. In other words, the individual house owner is engaging the appellant for construction of the complex for his personal use as**



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residence. The explanation to Section 65 (91a) categorically states that personal use includes permitting the complex for use as residence by another person on rent or without consideration. Therefore, it does not matter whether the individual buyer uses the flat himself or rents it out. There is nothing on record to establish that the individual buyers do not fall under the aforesaid explanation. For this reason, we find no service tax is chargeable from the appellant on the agreements entered into by them with individual buyers for completion of their buildings as has been alleged in the SCN. Consequently, the demand needs to be set aside and we do so. Accordingly, the demands for interest and imposition of penalties also need to be set aside."

c) CHD Developers Ltd vs State of Haryana and others, 2015 -TIOL-1521-HC - P&H-VAT wherein it was held that "45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property."

15. Appellant further submits that to be covered under the definition of works contract, one of the vital conditions is that there should be transfer of property in goods leviable for sales tax/VAT. Undisputedly sale of undivided portion of land along with semi-finished flat is not chargeable to VAT as there is no transfer of property in goods is involved and it is mere sale of immovable property (same was supported by above cited judgments also). Therefore, said sale cannot be considered as works contract and consequently no service tax is liable to be paid. All the goods till the prospective customer becomes owner upto entering of 'Agreement of



sale) has been self-consumed and not transferred to anybody. Further goods, being used in the construction of semi-finished flat, have lost its identity and been converted into immovable property which cannot be considered as goods therefore the liability to pay service under works contract service up till the execution of 'Agreement of sale' would not arise.

16. Appellant submits that once it is concluded that the amount received towards sale deed is not taxable then there is no short payment of service tax.

In Re: Other non-taxable receipts (Corpus fund, Electricity deposit, water charges, service tax etc.,) are not liable - hence shall not be included in 'taxable value'

17. The appellant herein submits that the various submissions were made with regards to non-taxability of Corpus fund, Electricity deposit, Water charges, Service tax etc., which were simply ignored by the earlier authorities without giving any clear findings.
18. Appellant submits that the amounts classified as non-taxable receipts includes electricity charges, corpus fund etc. Appellant submits that these receipts towards
- i) Corpus fund which is collected & totally kept in separate bank account and transferred to society/association once it is formed; collection of corpus fund & keeping in separate bank account and subsequent transfer to association/society is statutory requirement;
 - ii) Electricity deposit collected & totally remitted/deposited with the 'electricity board' before applying electricity connection to the villa and Appellant does not retain any amount out of it; this deposit is collected & remitted as per the statutory provisions of AP Electricity Reform Act 1998 r/w rules/regulations made there under;



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iii) Water deposit collected & totally remitted to Hyderabad Metropolitan Water Supply & Sewerage Board (HMWSSB) before taking the water connection. This Deposit amount also includes water consumption charges for first two months along with sewerage cess. All these deposits are collected & paid in terms of HMWSSB Act, 1989 r/w rules/regulations made thereunder;

iv) Service tax collected & remitted to the Central government as per the provisions of Finance Act, 1994;

As seen from the above, all these charges collected 'other non-taxable receipts' are statutory charges/deposit and received as mere reimbursements of expenses/charges incurred/paid on behalf of customers and does not involve any provision of service. Hence same shall be excluded from the taxable value *inter alia* in terms of Rule 5(2) of Service tax (determination of value) Rules, 2006.

19. Judicially also it was held that above charges are not to be included in taxable value. Relied on ICC Reality & Others Vs CCE2013 (32) S.T.R. 427 (Tri. - Mumbai); Karnataka Trade Promotion Organisation v. CST 2016-TIOL-1783-CESTAT-BANG; hence demand does not sustain to this extent. To evidence the receipt of corpus fund, service tax and electricity charges, Appellant is herewith enclosing the sample copies of ledger accounts of the customers as **Annexure XV**.

In Re: Re-quantification of demand

20. Without prejudice to above, in case any tax demand stands confirmed for the subject period, it is submitted that the amounts received towards construction agreement only should be taxed and not the total amount received.



Cum-tax benefit under Section 67 should be extended

21. Appellant submits that assuming but not admitting there is a liability under works contract service for sale of semi-finished flat, then as the Appellant has not collected service tax from the buyer, the benefit of cum-tax requires to be extended to the appellant.
22. Appellant submits that in light of the statutory backup as mentioned above and cases where it was held that when no service tax is collected from the customers the assessee shall be given the benefit of paying service tax on cum-tax basis
 - a) P. Jani & Co. vs. CST 2010 (020) STR 0701 (Tri.-Ahmd).
 - b) Municipal Corporation of Delhi vs CST, Delhi 2009 (016) STR 0654 Tri.-Del
 - c) Omega Financial Services Vs CCE, Cochin 2011 (24) S.T.R 590
 - d) BSNL Vs CCE, Jaipure 2011 (24) S.T.R 435 (Tri-Del).
23. On the basis of above decisions, Appellant submits that the benefit of cum-tax requires to be provided to the Appellant. On the basis of the same, Appellant submits that the cum-tax benefit shall be extended

In Re: Interest and Penalties are not imposable

24. Appellant submits that where the Service Tax itself is not payable, the question of paying of interest on the same does not arise as held by the Supreme Court in **Prathiba Processors Vs. UOI**, 1996 (88) ELT 12 (SC).
25. Appellant submits that imposition of penalty cannot be merely an automatic consequence of failure to pay duty hence the impugned order imposing the penalty requires to be set aside.
26. Appellant submits that when the law gets amended retrospectively penalty under Section 76 is not imposable. Relied on CCE, Ranchi v. Pensol



Industries Ltd 2003 (156) E.L.T. 998 (Tri. - Kolkata) where the penalty was set aside since tax became payable due to retrospective amendment.

27. Appellant submits that when the liability has arisen due to retrospective amendment, the penalties shall not be imposed. In this regard, reliance is placed on:

a) CCE, Meerut Vs Rama Vision Limited 2005 (181) ELT 201 (SC) wherein it was held that *"4. However, as provided by this Court in the case of Commissioner of Central Excise, Hyderabad, v. Associated Cement Companies Ltd. reported in 2005 (180) E.L.T. 3 (S.C.), we also take note of the fact that the impugned judgment is dated 4th May, 1999. The Validation Act came into force on 1st April, 2000. We are applying it today. The Respondent is absent. He will have to be given time to make payment. We, therefore, direct that the time to make payment, as provided in sub-clause 2(b) of Section 112, will only commence from the date intimation of this order is given to the Respondent by the Appellant. We are also of the view that on these facts penalty cannot be imposed. Thus the imposition of penalty is set aside."*

b) Star India Pvt Ltd Vs CCE, Mumbai & Goa 2006 (1) STR 73 (SC) wherein it was held that *"7. In any event, it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the legislature to retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of courts and Tribunals or other authorities, which required to be neutralised by the Validation Clause. We can only assume that the judgments, decree or orders etc. had, in fact, held that persons situate*



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like the appellants were not liable as service providers. This is also clear from the Explanation to the Validation Section which says that no act or acts on the part of any person shall be punishable as an offence which would have been so punishable if the Section had not come into force."

28. Appellant submits that they are under bonafide belief that the amounts received towards sale deeds are not subjected to service tax. It settled position of the law that if the Appellant is under bonafide belief as regards to non-taxability, imposition of the penalties are not warranted. In this regard, wishes to rely on the following judicial pronouncements.

a) Padmini Products v. Collector —1989 (43) E.L.T. 195 (S.C.)

b) Commissioner v. Surat Textiles Mills Ltd. — 2004 (167) E.L.T. 379 (S.C.)

29. Appellant submits that, when the tax itself is not payable, the question of penalty under section 76 does not arise. Further assuming but not admitting, that there was a tax liability, as explained in the previous paragraphs when Appellant were not at all having the intention to evade the service tax and further also there was a genuine doubt about the liability of tax on land value in the industry where the builder pays tax under Rule 2A Valuation (A huge matter of litigation), Appellant is acting in a bona fide belief, that he is not liable to collect and pay service tax, there is no question of penalty under section 76 resorting to the provisions of Section 80 considering it to be a reasonable cause for not collecting and paying service tax.

30. The Appellant submits that penalty is imposable when the Appellant breaches the provision of the statute with an intent to defeat the scheme of the Act when there is a confusion prevalent as to the leviability and the mala fide not established by the department, it would be a fit case for waiver of penalty as held by various tribunals as under



- a) Vipul Motors (P) Ltd. vs Commissioner of C. Ex., Jaipur-I 2008 (009) STR 0220 Tri.-Del
- b) Commissioner of Service Tax, Daman vs Meghna Cement Depot 2009 (015) STR 0179 Tri.- Ahmd

31. Appellant submits that issue involves interpretation and the periodical notices have been issued to the Appellant, the imposition of penalties under Section 76 is not tenable and the same needs to be set aside. In this regard, Appellant relied on M/s. Phoenix IT Solutions Ltd Vs CCE 2017 (52) STR 182 (Tri-Hyd).
32. Without prejudice to the foregoing, Appellant submits that penalty is proposed under section 77. However, the subject show cause notice has not provided any reasons as to why how the penalty is applicable under section 77 of the Finance Act, 1994. Further, the Appellant is already registered under service tax under works contract service and filing returns regularly to the department. Accordingly, the penal provision mentioned under section 77 is not applicable for the present case. As the subject order has not considered these essential aspects, the penalty under section 77 is not sustainable and requires to be set aside.
33. The Appellant submits that in the following two cases, M/s Creative Hotels Pvt. Ltd. Vs CCE, Mumbai (2007) (6) S.T.R (Tri-Mumbai) and M/s Jewel Hotels Pvt Limited Vs CCE, Mumbai-1 (2007) (6) S.T.R 240 (Tri- Mumbai) it was held that *"The authorities below have not given any allegation as to why penalty is required to be imposed upon them. Only because penalty can be imposed, it is not necessary that in all cases penalty is required to be imposed. In this case I accept the explanation of the Appellant and therefore dropped the penalty and allow the appeal."*



Benefit of Section 80 should be extended

34. Appellant submits that alleged short/non-payment of service tax was due to various reasons *inter alia*
- d) Given understanding that compliance made by Appellant is in accordance with the law.
 - e) Whatever believed as taxable was duly paid voluntarily.
 - f) There were divergent views of Courts over the classification of indivisible contracts, taxability of transaction involving immovable property etc.,
 - g) There was enough confusion prevalent on the applicability of the Service tax among the industry.
 - h) Matters were referred to larger bench at various instances.
35. All the above can be considered as reasonable cause and waiver of penalty can be granted in terms of section 80 of Finance Act, 1994. Relied on **CST, Vs Motor World 2012 (27) S.T.R 225 (Kar)**
36. The Appellant craves leave to alter, add to and/or amend the aforesaid grounds.
37. The Appellant wishes to be heard in person before passing any order in this regard.




Signature of the Appellant

PRAYER

Wherefore it is prayed that

- a. To set aside the impugned order to the extent aggrieved;
- b. To hold that the re-quantification made by the impugned order is incorrect;
- c. To hold that service tax is not applicable on amount received towards Sale Deed;
- d. To hold that service tax is not applicable on other non-taxable receipts
- e. To hold that cum-tax benefit under Section 67 should be extended;
- f. To hold that no interest and penalties are leviable;
- g. To hold that benefit of section 80 shall be extended;
- h. To hold that service tax already paid should be appropriated;
- i. Any other consequential relief shall be granted;



[Signature]
Signature of the Appellant

VERIFICATION

I, Soham Modi, Partner of M/s. Greenwood Estates, Hyderabad the Appellant herein do declare that what is stated above is true to the best of our information and belief.

Verified today 31st day of January 2023

Place: Hyderabad



[Signature]
Signature of the Appellant

DECLARATION

I/We, Soham Modi, Partner of Appellant firm herein, do hereby declare that subject matter not previously filed or pending before any other legal forum including Hon'ble High Courts/Supreme Court.

The Appellant further declare that they have not previously filed any appeal, writ petition or suit regarding the Order-In-Appeal No. HYD-SVTAX-SC-AP2-062-22-23 (APP-II) dated 31.10.2022, before any court or any other authority or any other Bench of the Tribunal.*

Declared today the 31st day of January 2023 at Hyderabad



[Signature]
Signature of the Appellant



AFFIDAVIT

I, Soham Modi, aged about 57 years, S/o. Satish Modi, and Partner of M/s. Greenwood Estates, the appellant herein, do swear and state on oath that an amount of Rs. 47,80,786/- has been already paid, through CENVAT Rs.24,29,887/- and through cash of Rs.23,50,899/- is paid towards mandatory pre deposit in terms of Section 35F of Central Excise Act, 1944 against Denovo Order-In-Original No. 05/2021-22-SEC-ADJN-ADC(ST) dated 26.07.2021 and against Order-In-Appeal No. HYD-SVTAX-SC-AP2-062-22-23 (APP-II) dated 31.10.2022.

I, Soham Modi, state that the above statement is true and correct to the best of my knowledge and belief.

Executed on this 31st January 2023 at Hyderabad

(Soham Modi)

NOTARY PUBLIC



ATTESTED
C.V.N. RAMA KRISHNA
M.Com., LL.B.
ADVOCATE & NOTARY
12-11-236, Waranguda,
HYDERABAD-500 061.
Phone No: 9346672475

10 FEB 2023

ANNEXURE-II

Accounting Code of the Service										Amount Tendered in Rupees									
0	0	4	4	0	4	1	0	0	0	0	2	3	1	1	2	3	4		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Total								0	0	0	2	3	1	1	2	3	4		

Received from Assessee Code No. **A A F G 0 7 1 1 0 5 T 0 0 1**

(in words) Rupees **Twenty three lakhs eleven thousand two hundred & thirty four only** (Only)

By Cash/Cheque/Draft/Pay Order No. **933942** Dated **07.01.13** Drawn on **State Bank Ltd**

on account of Union Service Tax as detailed in this taxpayer's counterfoil and on stamp affixed and signed therein

SI No. **1290**

State Bank of Hyderabad
R.P. Road, Secunderabad.

Name **Alokine chait**

CH. No. **922747**

Rs.: **19,72,916**

MICR Ctg. DL: **11/1/13**

For Credit of Challan & Tax

Accounting Code of the Service

0	0	4	4	0	3	3	1	9
0	0	4	4	0	8	9	1	8
0	0	4	4	0	4	2	6	6
0	0	4	4	0	3	3	1	9
0	0	4	4	0	2	5	1	9
0	0	4	4	0	2	5	1	9

Amount Tendered in Rupees

5	8	1	2	3	4	0	0
1	1	8	2	5	0	0	0
5	5	8	1	2	0	0	0
2	2	0	2	1	0	0	0
4	4	1	0	0	0	0	0
2	2	1	0	0	0	0	0

TAXPAYER'S COUNTERFOIL

RECEIVING BANK BRANCH STAMP

DATE: 21/12/11

AMOUNT: 1532.78

CHEQUE: 27

Received from Assessor Code No. AAHAF307111357000

(In words), Rupees Five lakhs thirty one thousand four hundred and four On

By Cashier/Collector, Order No. 473604 Dated 21/12/11 Drawn on HDFC Bank Ltd

on account of Union Service Tax as detailed in this taxpayer's counterfoil and on stamp affixed and signed therein.

Q-421403
GATE

For payments from April 2007 onwards G.A.R.-7 Proforma for Service Tax Payments (Receipt & Payment Rules 26)

Full Name GREENWATER GASTRO
 Complete Address S-4-1157/19: SOHAMMAN SION
M. S. ROAD, SECUNDERABAD
 Telephone No. 040 6633 5557 Pincode 500003
 Assessee Code No. AAHAF307111857001
 Commissionerate Name HIDERAABAD
 Commissionerate Code 52 Division Code 12 Range Code 03

Accounting Code of the Service	Amount Tendered in Rupees
00440334	177788000
00440238	35558000
00440426	17778000
0044	
0044	
0044	
Total	183121600

RECEIVING BANK BRANCH STAMP

(In words) Rupees Eighteen Lakhs Thirty One Thousand Two Hundred Sixty tendered by
 Cash/Cheque/Draft/Pay Order No. 556673 Dated 18/02/12 Drawn on HDFC BANK
 Signature of the Tenderer with date

Accounting Code of the Service	Amount Tendered in Rupees
00440334	177788000
00440238	35558000
00440426	17778000
0044	
0044	
0044	
Total	183121600

TAX PAYER'S COUNTERFOIL

RECEIVING BANK BRANCH STAMP

Received from Assessee Code No. AAHAF307111857001
 (In words) Rupees Eighteen Lakhs Thirty One Thousand Two Hundred Sixty only
 By Cash/Cheque/Draft/Pay Order No. 556673 Dated 18/02/12 Drawn on HDFC BANK
 on account of Union Service Tax as detailed in this taxpayer's counterfoil and on stamp affixed and signed therein.

GATE



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.. 61

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

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

HYD-SVTAX-SC-AP2-062-22-23-ST dt.31.10.2022

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

HYD-SVTAX-SC-AP2-062-22-23-ST dt.31.10.2022

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

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20 DEC 2022
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A/c. No: 1742
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SPEED POST

भारत सरकार सेवार्थ
ON INDIA GOVERNMENT SERVICE

Office of the General Manager of
Customs & Central Tax
Appellate-II Customs, Hyderabad
7th Floor, GST Building, L.B. Stadium Road,
Eastenrlyugh, Hyderabad-500 004.

Annexure - IV

1

FORM ST-4

Form of Appeal to the Commissioner (Appeals-II)
[Under Section 85 of the Finance Act, 1994 (32 of 1994)]

BEFORE COMMISSIONER (APPEALS-II),
07TH FLOOR, GST BHAVAN, L.B. STADIUM ROAD, BASHEERBAGH,
HYDERABAD - 500 004

(1) Appeal No. _____	_____ of 2021
(2) Name and address of the Appellant	M/s. Greenwood Estates, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad-500003
(3) Designation and address of the officer Passing the decision or order appealed against and the date of the decision or order	The Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheer bagh, Hyderabad 500 004 [Order (DE NOVO) NO: 05/2021-22-SEC- ADJN-ADC(ST) dated 26.07.2021]
(4) Date of Communication to the Appellant of the decision or order appealed against	04.08.2021
(5) Address to which notices may be sent to the Appellant	M/s Hircgange & Associates LLP, 4th Floor, West Block, Srida Anushka Pride, Above Lawrence and Mayo, Road No.12, Banjara Hills, Hyderabad, Telangana - 500 034 Mail id: venkataprasad@hircgange.com Mobile No: +91 8978114341 (And also copy to the Appellant)
(5A)(i) Period of dispute	Jan'10 to Dec'10 and Jan'11 to Dec'11
(ii) Amount of service tax, if any demanded for the period mentioned in the Col. (i)	Rs. 45,81,201/- for the period Jan'10 to Dec'10 and Rs. 44,65,371/- for the period Jan'11 to Dec'11
(iii) Amount of refund if any claimed for the period mentioned in Col. (i)	NA
(iv) Amount of Interest	In terms of section 75 of Finance Act, 1994
(v) Amount of penalty	Rs. 4,58,120/- for the period Jan'10 to Dec'10 and Rs. 4,46,537/- for the period Jan'11 to Dec'11
(vi) Value of Taxable Service for the period mentioned in Col.(i)	Rs. 11,11,94,191/- for the period Jan'10 to Dec'10 and Rs. 10,83,82,788/- for the period Jan'11 to Dec'11
(6) Whether Service Tax or penalty or interest or all the three have been deposited.	An amount of Rs. 47,80,786/- has been already paid though CENVAT of Rs.24,29,887/- and though cash of Rs. 23,50,899/-. The same can be adjusted towards mandatory pre-deposit in terms of section 35F of Central Excise Act, 1944 as required (Copy of challans enclosed as



37

	Annexures <u>1</u>
(6A) Whether the appellant wishes to be heard in person?	Yes, at the earliest
(7) Reliefs claimed in appeal	To set aside the impugned order to the extent aggrieved and grant the relief claimed.

Appellant

Signature of 



STATEMENTS OF FACTS

A. M/s. Greenwood Estates (hereinafter referred to as 'Appellant') is mainly engaged in the sale of residential houses to prospective buyers while the units are under construction. For the said purpose, the Appellant enters into two separate agreements with their customers one is for sale of undivided portion of land together with semi-finished flat (sale deed) and another one is construction agreement for undertaking construction. Sale deed is registered, and appropriate 'Stamp Duty' has been discharged on the same.

B. The details of amounts received from customers is as follows:

Jan 2010 to Dec 2010			
Description	Receipts	Non-taxable	Taxable
Sum towards sale deed	Rs.4,07,44,617	Rs.4,07,44,617	Nil
sum towards agreement of Construction	Rs.5,32,39,887	Nil	Rs.5,32,39,887
Sum towards other taxable receipts	Rs.13,29,697	Nil	Rs.13,29,697
Sum towards VAT, Regn. charges, etc	Rs.1,11,48,364	Rs.1,11,48,364	Nil
Total	Rs.10,64,62,565	Rs.5,18,92,981	5,45,69,584
Jan 2011 to Dec 2011			
Description	Receipts	Non taxable	Taxable
Sum towards sale deed	Rs.4,28,44,626	Rs.4,28,44,626	Nil
Sum towards agreement of Construction	Rs.5,50,55,881	Nil	Rs.5,50,55,881
Sum towards other taxable receipts	Rs.11,40,800	Nil	Rs.11,40,800
Sum towards VAT, Regn. charges, etc	Rs.96,23,950	Rs.96,23,950	Nil
Total	Rs.10,86,65,257	Rs.5,24,68,576	Rs.5,61,96,681

C. The approximate liability for the impugned period are as follows (Approx):

Particulars	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011
Gross receipts	10,64,62,565	10,86,65,257
Less: Amounts received for the period January 2010 to June 2010	4,71,37,873	Not Applicable
Amount received during the period July 2010 to December 2010	5,93,24,692	Not Applicable
Less: Sale Deed value	4,07,44,617	4,28,22,626
Less: VAT, Registration Charges and other non-taxable receipts	1,11,48,364	96,23,950
Taxable Value	74,31,711	5,62,18,681
ST Liability @4.12%	3,06,186	23,16,210
Total Service tax payable		26,22,396
Service Tax paid		26,22,396

[Handwritten signature]


Payable/(Excess paid)	(21,58,390)
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- D. As seen from the above table, an amount of Rs. 47,80,786/- has already paid towards service tax on the amounts received from customers against the liability of Rs. 26,22,396/- resulting in excess payment of Rs. 21,58,390/-.
- E. The levy of service tax on above arrangements has seen a fair share of litigation and amendments. In 2009, there was no clarity on whether service tax was payable or not. However, the Appellant chose to pay service tax under protest on the amount received towards the "construction agreement" on the basis of law as understood by them. Thereafter, based on Circular No. 108/2/2009 ST dated 29.01.2009, the Appellant believed that service tax was not payable and therefore discontinued payment of service tax on the said "Construction agreements".
- F. As Appellant has stopped making payment of Service Tax, the Anti Evasion department initiated the proceedings against the Appellant and various statements were recorded. In the above context, a Show Cause Notice (SCN) dated 21.05.2010 for the period from January 2009 to December 2009 ("First SCN") was issued against the Appellant.
- G. Subsequently, periodical SCN's dated 23.04.2011 & dated 24.04.2012 ("Second SCN & Third SCN") was issued for the period from January 2010 to December 2010 and January 2011 to December 2010 (copies enclosed as annexure (X)). The said SCN's were issued alleging that:
- "As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi-finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by assessee thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "works contract service"*
- H. The aforesaid Show Cause Notices were adjudicated vide a common Order-in-Original No.51/2012-Adjn (ST)(ADC) dated 31.08.2012 wherein vide Para 17 of the impugned Order stated as follows

"Various flats have been sold by them to various customers in two states. First, they have executed a sale deed at semi finished stage by which the ownership of the semi-finished flats was transferred to the customer. Appropriate stamp duty was paid on the sale deed value. No service tax been demanded on the sale deed value in light of Board Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

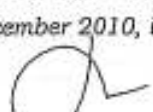
- I. From the above Para, it is clear that the OIO dated 31.08.2012 accepted that service tax was not demanded on sale deed value, however, OIO dated 31.08.2012 erred while quantifying the demand as it has included the amounts received towards Sale deeds also.
- J. Appellant has filed an Appeal before the Commissioner (Appeals) against the said order along with stay application. The Commissioner (Appeals) vide Order-in-Appeal No.39/2013 (H-II) S. Tax dated 27.02.2013 did not agree on the contentions of personal use but he did find merit in the Appellant plea of re-quantification and therefore remanded the matter back to the Original Authority to re-quantify the value of taxable services after verification of the details.
- K. Against the above referred OIA, Appellant has filed an appeal before CESTAT and CESTAT vide Final Order No.20401/2014 in ST/Stay/27332/2013 in ST/27017/2013-DB dated 25.03.2014 stated as follows

"It was submitted by the both sided that the issue is not only re-quantification but also verification of certain facts and aspects of law which have already been confirmed by Commissioner (appeals). Instead of going into issue which will result in a decision on a part of appeal, we consider it appropriate that the litigation should be merged into one rather than having separate parallel litigation 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 to show cause notice and also under take re-quantification as directed by the 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 remind the matter without allowing appellant to present their case again on the aspects which have 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 a fresh and pas

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reasoned order, as far as re-quantification is concerned whenever there is no dispute, The re-quantification can be done as directed by Commissioner (appeals). Whatever there are dispute the matter can be decided by adjudicating authority, by passing a well reasoned and detailed order. It is made clear that the amounts already deposited need not refunded just because the impugned order has been set aside till the issue is decided."

- L. Subsequently, the adjudicating authority has granted personal hearing wherein the authorized representative requested 10-day time to give the documents for computations and written submissions.
- M. The Appellant vide its letter dated 22.12.2015 has given working of receipts and the attribution of the said receipts towards sale deeds, construction agreements and other non-taxable receipts. The details were submitted along with copies of agreements, financial statements and ledger copies.
- N. The Additional Commissioner has passed OIO No. 83/2016-Adjn(ST)(ADC) dated 09.06.2017 re-confirming the demand and rejected the submissions for re-quantification citing that documents were not properly submitted (Copy of OIO is enclosed as Annexure ^{VII}1).
- O. Appellant has filed an appeal before Commissioner (Appeals-II) (Copy of ST-4 is enclosed as Annexure ^{VII}2) and appeared for personal hearing on 15.03.2018.
- P. Subsequently, Appellant received Order-in-Appeal HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018 (Copy of OIA is enclosed as Annexure ^{VI}3) confirming a part of the demand and remanded back for re-quantification. The Appellant has filed an appeal against the above referred order before CESTAT, Hyderabad to the extent aggrieved vide Appeal No. ST/31034/2018-DB and the same is pending for disposal.
- Q. Meanwhile, the adjudicating authority has initiated the remand proceedings and scheduled the personal hearing. Despite of requesting to keep the proceedings in abeyance till the disposal of appeal by CESTAT, the Additional Commissioner of Central Tax vide Order (De Novo) No. 05/2021-22-SEC-ADJN-ADC(ST) dated 26.07.2021 has passed an order confirming the demand which is as follows:
 - (a) In respect of Show cause notice O.R. No.61/2011-Adjn.(ST) dated 23.04.2011
 - a. I confirm the demand of an amount of Rs 45,81,201/- (including Cess) [Rupees Forty-Five Lakh Eighty-One Thousand Two Hundred and One only] being the Service Tax payable on the taxable services rendered during the period from January 2010 to December 2010, in terms of

- section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad.
- b. in terms of Section 75 of the Finance Act, 1994, I order M/s Greenwood Estates to pay interest at appropriate rates, on the Service Tax payable as mentioned at Sl. No. (i) above.
- c. I impose a penalty of Rs.4,58,120 /- [Rupees Four Lakh Fifty-Eight Thousand One Hundred and Twenty only] (being 10% of the ST payable) on M/s Greenwood Estates, Hyderabad, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax.
- d. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s Greenwood Estates, Hyderabad, under Section 77 of the Finance Act, 1994, for failure to declare the right taxable incomes in their ST-3 return.
- (b) In respect of Show cause notice O.R.No.52/2012-Adjn. (ST) dated 24.04.2012
- e. I confirm the demand of an amount of Rs 44,65,371/- / - (including Cess) [Rupees Forty Four lakh Sixty Five Thousand Three Hundred and Seventy One only] being the Service Tax payable on the taxable services rendered during the period from January 2011 to December 2011, in terms of sub-section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad
- f. in terms of Section 75 of the Finance Act, 1994, I order M/s Greenwood Estates to pay interest at appropriate rates, on the Service Tax payable as mentioned at Sl. No. (i) above.
- g. I impose a penalty of Rs.4,46,537/- [Rupees Four Lakh Forty Six Thousand Five Hundred and Thirty Seven only] (being 10% of the ST payable) on M/s. Greenwood Estates Hyderabad, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax.
- h. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s.Greenwood Estates, Hyderabad, under Section 77 of the Finance return.

To the extent aggrieved by impugned order, which is contrary to facts, law and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Appellant prefers this appeal on the following grounds (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. Appellant submits that the impugned order (to the extent aggrieved) is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.

In Re: Re-quantification of demand

2. Appellant at the outset is contesting the demand of service tax and other aspects in the above referred OIA dated 27.04.2018 which has remanded the matter to lower authority *inter alia* that

- a. There is no service tax liability on the builder during the period prior to 01.07.2010;
- b. The 'sale deed' value shall be excluded while arriving the taxable value;
- c. Amount received towards registration charges, stamp duty etc., shall be excluded while arriving the taxable value;

Accordingly, Appellant has filed an appeal before Hon'ble CESTAT, Hyderabad vide appeal No. ST/31034/2018 which is pending for disposal. As the same OIA is already appealed before the Hon'ble Tribunal, Appellant humbly requests Hon'ble Commissioner (Appeals) to keep the proceedings in abeyance till the disposal of appeal by Hon'ble CESTAT, Hyderabad.

3. In this regard, Appellant wish to place reliance on

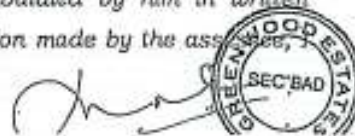
- a. Vilsons Roofing Products Pvt Ltd Vs CCE, Kolhapur 2013-TIOL-2023-CESTAT-MUM wherein it was held that "4. Brief facts of the case are that the appellants filed a refund claim before the adjudicating authority which was sanctioned and the refund was given to the appellants. Against the said order, the Revenue preferred an appeal before the Commissioner (Appeals) who set aside the order of sanctioning the refund claim and remanded the matter back to the adjudicating authority for reconsideration. The said order was challenged by the appellants before the Tribunal on the ground that the Commissioner (Appeals) has no power to remand the matter to the adjudicating authority and obtained stay from the Tribunal. While the matter is pending before the Tribunal, the adjudicating authority, on the matter on remand by the Commissioner (Appeals), has rejected the refund claim of the appellants. On appeal before the Commissioner (Appeals) the rejection was upheld. Aggrieved by the said order the appellants are before me.

5. When the issue before this Tribunal is sub judice therefore, the remand proceeding was not warranted. Hence, the impugned order passed by the adjudicating authority has no legal sanctity. Accordingly, the impugned order is



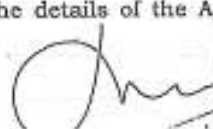
order is set aside and the appeals are allowed. The stay applications are also disposed of in the above terms."

- b. Agro Tech Foods Pvt Ltd Vs CC(I), Nhavasheva 2017 (345) ELT 668 (Tri-Mum)
 - c. Fiberfill Engineers Vs CCE, Delhi 2016 (332) ELT 478 (Del)
 - d. P K International Vs CCE, Thane-II 2014 (301) ELT 3 (Bom)
 - e. CC, Uttar Pradesh Vs Pidilite Industries Limited 2014 (309) ELT 598 (All)
4. Without prejudice to above, Appellant submits that the Order-in-Appeal which has remanded the matter to lower authority vide Para 12, set side para 5(a)(i) and 5(b)(i) OIO No. 83/2016-Adjn(ST)(ADC) dated 09.06.2017 and directed to examine the following:
- a. *Examine the evidence presented in the CD regarding the appellants residential unit wise liability under the composition scheme.*
 - b. *The elements of VAT (if any), and value of goods whose title stands transferred as sale alone is excludible, the same may be excluded .*
 - c. *Registration charges/ stamp duty are not excluded in the composition scheme, hence includible for assessment to WCS; 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 composition scheme;*
 - d. *There is a force in the contention that the electricity/ water charges are collected and paid to the utilities for the corresponding services; that the same represent reimbursable expenses out of the ambit of the levy, as settled by the Apex court in the UNION OF INDIA Vs INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT LTD [2018 (10) G.S.T.L 401 (S.C)]; therefore I hold that the same shall be excluded from the assessment of tax; and that cum-tax benefit shall be extended under sec 67(2) on the values included from the sale deed.*
5. Consequent to above referred remand directions, Appellant has filed the remand submissions submitting the details of amounts collected towards VAT, water and electricity charges (other non-taxable receipts). In this regard, Appellant submits that the impugned order vide Para 5.5 has given a finding that "the assessee has not provided any worksheets to show that how he has arrived at the quantification for deductions as tabulated by him in written submissions. Since there is no basis for the tabulation made by the ass



decide to go with the department's quantification as I has taken the date made available by the assessee as the basis for arriving at the above amounts. As directed by Commissioner (Appeals) the aforesaid amounts in the foregoing table is liable for deduction from the gross receipts. Accordingly, I hold that Rs. 15,27,926/- is liable for deduction from the gross receipts"

6. In this regard, Appellant submits that the finding of the impugned order is not correct in as much as the Appellant has submitted all the details during the remand proceedings. Appellant submits that the following information has been submitted by the Appellant though E-mail on 09.06.2021 and 18.06.2021 (Copy of E-mail is enclosed as Annexure (II))
 - a. Statement showing the Customer wise receipts along with details of amounts received before receipt of Occupancy Certificate and after receipt of Occupancy Certificate
 - b. Copies of Income Tax returns for the financial years 2015-16, 2016-17 and 2017-18
7. Subsequently, Appellant has also submitted the copies of sale deeds, agreement of construction and sale ledgers in a CD format to the concerned inspector. To this extent, Appellant vide letter dated 29.06.2021 has stated that the above referred information was submitted and requested to confirm the same. Further, Appellant has requested the adjudicating authority that Appellant is ready to submit any information as required. However, the Appellant has not received any request from the department requesting any information (Copy of letter dated 29.06.2021 is enclosed as Annexure V).
8. Appellant further submits that Appellant vide its letter dated 23.07.2021 has submitted the following information in a pen drive
 - a. Sale deed copies entered with the customers during 01.01.2010 to 31.12.2011
 - b. Agreement of Construction entered with the customers during 01.01.2010 to 31.12.2011
 - c. Ledger accounts of the customers
 (Copy of letter dated 23.07.2021 is enclosed as Annexure V)
9. Appellant submits that the amount of VAT collected from the customers can be evidenced from the VAT challan enclosed to the Sale deed copies submitted vide above referred letter dated 23.07.2021. Further, the details of the Appellant

submits that all the above shows that the Appellant has submitted the entire information to the department, therefore the finding of the impugned order is not correct.

10. Further, Appellant submits that the impugned order has considered only the below amounts as VAT and other Non-taxable receipts while re-quantifying the demand as against the actual amounts

Particulars	Jan'10 to Dec'10	Jan'11 to Dec'11	Total
VAT Charges	6,66,565	7,43,084	14,09,649
Electricity and water charges	72,379	45,898	1,18,277
Total	7,38,944	7,88,982	15,27,926

To evidence that the Appellant has received the amounts as stated in the remand proceedings, Appellant is herewith submitting a receipt wise statement along with copy of sale deed as a proof for VAT amount and ledger accounts of the customers with respect to water and electricity charges as a proof. This shows that the amounts considered by impugned order is not valid and needs to be set aside.

11. Since the Appellant is in appeal before CESTAT against against the service tax demand confirmed by Order-in-Appeal on amounts received prior to 01.07.2010 and amounts received towards sales deed, registration charges, Appellant would like to re-iterate the submissions in previous ST-4 from Para 3 to Para 67 (Copy of ST-4 is enclosed as Annexure VII).

In Re: Interest and penalties should not be imposed

12. Without prejudice to the foregoing, Appellant submits that when service tax itself is not payable, the question of interest 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).
13. Appellant submits that imposition of penalty cannot be merely an automatic consequence of failure to pay duty hence the impugned order imposing the penalty requires to be set aside.
14. It settled position of the law that if the Appellant is under bonafide belief as regards to non-taxability, imposition of the penalties are not warranted. In this regard, wishes to rely on the following judicial pronouncements.



- a. Padmini Products v. Collector — 1989 (43) E.L.T. 195 (S.C.)
- b. Commissioner v. Surat Textiles Mills Ltd. — 2004 (167) E.L.T. 379 (S.C.)

15. Appellant submits that, when the tax itself is not payable, the question of penalty under section 76 does not arise. Further assuming but not admitting, that there was a tax liability, as explained in the previous paragraphs where Appellant were not at all having the intention to evade the service tax and further also there was a genuine doubt about the liability of tax on land value in the industry where the builder pays tax under Rule 2A Valuation. (A huge matter of litigation), Appellant is acting in a bona fide belief, that he is not liable to collect and pay service tax, there is no question of penalty under section 76 resorting to the provisions of Section 80 considering it to be a reasonable cause for not collecting and paying service tax.

16. The Appellant submits that penalty is imposable when the Appellant breaches the provision of the statute with an intent to defeat the scheme of the Act when there is a confusion prevalent as to the leviability and the mala fide not established by the department, it would be a fit case for waiver of penalty as held by various tribunals as under

- a. Vipul Motors (P) Ltd. vs Commissioner of C. Ex., Jaipur-I 2008 (009) STR 0220 Tri.-Del
- b. Commissioner of Service Tax, Daman vs Meghna Cement Depot 2009 (015) STR 0179 Tri.-Ahmd

17. Appellant submits that issue involves interpretation and the periodical notices have been issued to the Appellant, the imposition of penalties under Section 76 is not tenable and the same needs to be set aside. In this regard, Appellant relied on M/s. Phoenix IT Solutions Ltd Vs CCE 2017 (52) STR 182 (Tri-Hyd).

18. Without prejudice to the foregoing, Appellant submits that penalty is proposed under section 77. However, the subject show cause notice has not provided any reasons as to why how the penalty is applicable under section 77 of the Finance Act, 1994. Further, the Appellant is already registered under service tax under works contract service and filing returns regularly to the department. Accordingly, the penal provision mentioned under section 77 is not applicable for the present case. As the subject order has not considered these essential aspects, the penalty under section 77 is not sustainable and requires to be set aside.



19. The Appellant submits that in the following two cases, M/s Creative Hotels Pvt. Ltd. Vs CCE, Mumbai (2007) (6) S.T.R (Tri-Mumbai) and M/s Jewel Hotels Pvt Limited Vs CCE, Mumbai-1 (2007) (6) S.T.R 240 (Tri- Mumbai) it was held that *"The authorities below have not given any allegation as to why penalty is required to be imposed upon them. Only because penalty can be imposed, it is not necessary that in all cases penalty is required to be imposed. In this case I accept the explanation of the Appellant and therefore dropped the penalty and allow the appeal."*

Benefit of Section 80 should be extended

20. Appellant submits that alleged short/non-payment of service tax was due to various reasons *inter alia*

- a. Given understanding that compliance made by Appellant is in accordance with the law.
- b. Whatever believed as taxable was duly paid voluntarily.
- c. There were divergent views of Courts over the classification of indivisible contracts, taxability of transaction involving immovable property etc.,
- d. There was enough confusion prevalent on the applicability of the Service tax among the industry.
- e. Matters were referred to larger bench at various instances.

All the above can be considered as reasonable cause and waiver of penalty can be granted in terms of section 80 of Finance Act, 1994. Relied on *CST, Vs Motor World* 2012 (27) S.T.R 225 (Kar)

21. The Appellant craves leave to alter, add to and/or amend the aforesaid grounds.
22. The Appellant wishes to be heard in person before passing any order in this regard.


 Signature of the Appellant

PRAYER

Wherefore it is prayed that

- a. To set aside the impugned order to the extent aggrieved;
- b. To hold that the re-quantification made by the impugned order is not correct;
- c. To hold that no interest and penalties are leviable;
- d. To hold that benefit of section 80 shall be extended;
- e. To hold that service tax already paid should be appropriated;
- f. Any other consequential relief shall be granted;

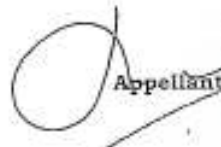

Appellant 

VERIFICATION

I, Soham Modi, partner of M/s. Green Wood Estates, the Appellants herein do declare that what is stated above is true to the best of our information and belief.

Verified today 30th day of September 2021

Place: Hyderabad


Appellant 

ANNEXURE-V

OR No.64/2018-19-GST-Sec-Adjn-JC(ST)(De novo)

OIO No.05/2021-22-Sec-Adjn-ADC(ST)

Date:26.07.2021

DDN-20210756Y0000000A 54



केंद्रीय कर, केन्द्रीय उत्पाद शुल्क व सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX

सिकंदराबाद आयुक्तालय

SECUNDERABAD COMMISSIONERATE

जी एस टी भवन, एलबीस्टेडियमरोड, बशीरबाग, हैदराबाद-500004

GST BHAVAN, L.B.STADIUM ROAD, BASHEER BAGH, HYDERABAD-500 004

Email: adjudication3@gmail.com

O.R.No.64/2018-19-GST-Sec-Adjn-JC(ST) (De novo)

Date:26.07.2021

ORDER (DE NOVO) NO: 05 / 2021-22-SEC-ADJN- ADC (ST)

[Passed by G. Rashmi, Additional Commissioner of Central Tax & Central Excise, Secunderabad GST Commissionerate in respect of M/s. Greenwood Estates, Secunderabad. (De novo)]

p'stavanaa
PREAMBLE

1. निम्नप्रयोगकेलियुक्तप्रतिलिपिकोनोंकारिग्राहकयह प्रतिविकल्पकेरीगती
This copy is granted free of charge for the private use of the person to whom it is issued.

2. जोपीनवित्तकेन्द्रीय उत्पाद शुल्कअधिनियम, 1944 केअंतर्गत धारा 35 द्वारा केंद्रितकलेदुषयनिलो, इसप्रकार प्राप्तकलेदुषयनिलो के खिलाफआदेशकी प्राप्तिसे 60 दिन के भीतरआयुक्त से अपील पुस्तकालयकार्यलय 7 बॉल, एल बी, स्टेडियमरोड, बशीरबाग, हैदराबाद 500 004 कोअपनीअपीलपुस्तकालयकरले ।

Under Sec.85. of the Finance Act, 1994, as amended, any person aggrieved by this order can prefer an appeal within 60 days from the date of communication of such order/decision to the Commissioner (Appeals), Hqrs., Office, 7th floor, L.B.Stadium Road, Bashceerbagh, Hyderabad - 500 004.

3. धारा 35 के उप खण्ड द्वारा केंद्रितकले आयुक्त द्वारापुस्तक कोपीनलेवातीअपीलकार्य ई.ए.1 मेंलेगीएलबीनॉवित्त प्रतिविकल्पकेअनुसारकीअपीललिपि ।

An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute.

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 ४ फार्म में की गई अपील अनुलिपि में प्रस्तुत की जानी चाहिए और उसके साथ जिसने निर्णय या आदेश विरुद्ध अपील की जा रही हो। उसकी एक प्रति भी संलग्न की जानी चाहिए।

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. अपील और जिसने निर्णय या आदेश के विरुद्ध अपील की जा रही हो उस आदेश की प्रति पर भी समुचित मूल्य के अदालती टिकट लगाए जाने चाहिए।

The appeal as well as the copy of the decision or order appealed against must be affixed with their fee stamp of the appropriate amount.

Sub:-Service Tax - Non-payment of Service Tax by M/s. Greenwood Estates, Secunderabad for the period January 2010 to December 2011- Issue of Orders (De novo) - Regarding.

BREIF FACTS OF THE CASE:

This Order (De novo) is being passed in compliance to the Order-in-Appeal No.Hyd-Excus-SC-AP2-0025-18-19-20-ST, dated 27.04.2018 passed by the Commissioner (Appeals-II), Hyderabad.

2. M/s Greenwood Estates, 5-4-187/384, II Floor, Soham Mansion, MG Road, Secunderabad-500003 (hereinafter referred to as the assessee are engaged in providing Works Contract Service. The assessee are a registered

partnership firm and got themselves registered with the Department vide Service Tax Registration bearing No. AAHFG0711BST001.

3.1. 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 have 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.

3.2. 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-GRX dt 23.04 2011	Rs. 48,00,391/-	January, 2010 to December, 2010
O.R.No.52/2012-ADJ-ST	Rs.46,81,850/-	January, 2011 to December, 2011

3.3. 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,

3.4. 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.

3.5. 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.

3.6. The Adjudicating Authority vide Order-In-Original, No.83/2016-Adjn(ST)(ADC)dt 09.06.2017 in the de novo proceedings arising from the remand ordered by the Tribunal as well as Commissioner (Appeals) forum, heard the appellant and passed the de novo adjudication order Impugned herein, holding that the appellant was liable to pay tax on the construction of residential complex service, Regarding the quantification of the service tax demand for which the remand was made by the Commissioner (Appeals), it was held that the appellant had not submitted the amounts received supported by any documentary evidence and hence the figures mentioned in their submissions dated 22.12.2015 (Para 4.8 of the OIO Impugned herein) were not acceptable; that the figures submitted by the appellant to the various fora were also inconsistent as detailed in the impugned order. The demand was confirmed in respect of the two notices dated 23.04.2011 & 24.04.2012.

3.7. Aggrieved by the Order-In-Original No.83/2016-Adjn(ST)(ADC), dt 09.06.2017, the assessee filed an appeal before the Commissioner(Appeals), Hyderabad. The Commissioner (Appeals), Hyderabad vide para 12 of Order-in-Appeal No. Hyd-Excus-SC-AP2-0025-18-19-ST dated 27.04.2018 had remanded the case to original authority. The order portion at Para 12 reads as follows:

"12. In view of the discussions recorded above, para 5(a)(i) and 5(b)(i) of the impugned order is set aside and remanded to the Adjudicating Authority who is directed to:

- (a) Examine the evidence presented in the CD regarding the appellant's residential unit-wise liability under the composition scheme;*
- (b) The elements of VAT (if any), and value of goods whose title stands transferred as sale alone is excludible, the same may be excluded,*
- (c) Registration charges / stamp duty are not excluded in the composition scheme, hence includible for assessment to WCS; it is expressly clarified that land is not "goods" for the purpose of the Composition Scheme, and the land value mentioned in the sale deed is includible for assessment under the composition scheme;*
- (d) 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 the levy, as settled by the Apex Court in UNION OF INDIA Versus INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD. (2018 (10) G.S.T.L. 401 (S.C.)); therefore I hold that the same shall be excluded for assessment to tax; and that cum-tax benefit shall be extended under Sec 67(2) on the values included from the sale deed.*
- (e) Interest, a quintessential liability accompanying belated payment of tax, is to be computed on such modified tax liability arrived at supra. Para 5(a)(ii) and 5(b)(ii) of the impugned order stands modified accordingly,*
- (f) Penalty under Sec 76 has been adjudged on 09.06.2017, and the penal provision as amended on 14.05.2015 shall apply, as mandated by Sec 788. Therefore, Para 5(a)(ii) and 5(b)(iii) of the impugned order stand modified to the effect that the quantum of penalty under Sec 76 in each notice is restricted to 10% of the tax liability computed in the de novo proceedings in compliance with this remand.*

OR No.64/2018-19-GST-Scd-Adjn-JC(ST)(De novo)

OIO No.05/2021-22-Scd-Adjn-ADC(ST)
Date:26.07.2021
DBN-20210736YC0000000A5A

3.8. In view of the directions of the Commissioner(Appeals) order dt 27.04.2018 remanding the matter, the matter is taken up for *de novo* adjudication.

ASSESSEES' REPLY & PERSONAL HEARING:

4.1. Shri. P. Venkata Prasad, Chartered Accountant and Shri. Mangipelli Jayaprakash, Sr. Manager - Finance & Accounts has appeared for personal hearing on 18.06.2021 on behalf of the assessee, and submitted the following written submissions vide their letter dt. 29.06.2021 :-

4.2 The assessee at the outset has contested the demand of service tax and other aspects in the above referred OIA dated 27.04.2018 *inter alia* that

- a. There is no service tax liability on the builder during the period prior to 01.07.2010;
- b. The 'sale deed' value should be excluded while arriving the taxable value;
- c. Amount received towards registration charges, stamp duty etc., should be excluded while arriving the taxable value;

Accordingly, the assessee has filed an appeal before Hon'ble CESTAT, Hyderabad vide appeal No. ST/31034/2018 which is pending for disposal. As the same OIA is already appealed before the Hon'ble Tribunal, the assessee requested the Ld. Adjudicating authority to keep the proceedings in abeyance till the disposal of appeal by Hon'ble CESTAT, Hyderabad.

4.3. The assessee has relied up on the following case law in this regard

- a. Vilsons Roofing Products Pvt Ltd Vs CCE, Kolhapur 2013-TIOL-2023-CESTAT-MUM wherein it was held that "4. Brief facts of the case are that the appellants filed a refund claim before the adjudicating authority which was sanctioned and the refund was given to the appellants. Against the said order, the Revenue preferred

an appeal before the Commissioner (Appeals) who set aside the order of sanctioning the refund claim and remanded the matter back to the adjudicating authority for reconsideration. The said order was challenged by the appellants before the Tribunal on the ground that the Commissioner (Appeals) has no power to remand the matter to the adjudicating authority and obtained stay from the Tribunal. While the matter is pending before the Tribunal, the adjudicating authority, on the matter on remand by the Commissioner (Appeals), has rejected the refund claim of the appellants. On appeal before the Commissioner (Appeals) the rejection was upheld. Aggrieved by the said order the appellants are before me.

5. When the issue before this Tribunal is sub judice therefore, the remand proceeding was not warranted. Hence, the impugned order passed by the adjudicating authority has no legal sanctity. Accordingly, the impugned order is set aside and the appeals are allowed. The stay applications are also disposed of in the above terms."

- b. Agro Tech Foods Pvt. Ltd. Vs CC(I), Nhavasheva 2017 (345) ELT 668 (Tri-Mum)
- c. Fiberfill Engineers Vs CCE, Delhi 2016 (332) ELT 478 (Del)
- d. P K International Vs CCE, Thane-II 2014 (301) ELT 3 (Bom)
- e. CC, Uttar Pradesh Vs Pidilite Industries Limited 2014 (309) ELT 598 (All)

4.4 The assessee has stated that without prejudice to the above, in case the Adjudicating authority wishes to proceed for *de novo* adjudication, the assessee wishes to make the following submissions. In this regard, the assessee submitted that the submissions are only made for deciding the issues in the subject remand directions and not in substitution of the grounds pleaded before the Hon'ble CESTAT, Hyderabad.

4.5 The assessee stated that they have submitted the statement of Residential unit wise liability in accordance with the remand directions

23

given in the OIA, and stated that however since they have not collected any service tax from the customers, in case the demand stands confirmed, the assessee requested for re-quantification of the same after allowing the benefit of cum-tax u/s. 67(2) of Finance Act, 1994 ibid. The liability statement submitted after considering the cum-tax benefit is as under:

Particulars	Jan'10 to Dec'10	Jan'11 to Dec'11	Total
Gross Receipts	10,64,62,565	10,86,65,257	21,51,27,822
Less: Deductions			
VAT	15,20,860	14,17,634	29,38,494
Other Non Taxable Receipts - (Electricity and Water Charges)	43,27,640	37,03,582	80,31,222
Taxable value	10,06,14,065	10,35,44,041	20,41,58,106
Net Taxable Value after considering Cum-tax benefit	9,66,32,794	9,94,46,832	19,60,79,625
Tax Amount @ 4.12%	39,81,271	40,97,209	80,78,481
Actually Paid	24,69,553	23,11,233	47,80,786
Short/(Excess) Paid	15,11,718	17,85,976	32,97,695

4.6 The assessee also submitted that the above calculation is purely based on the directions given by the Order-in-Appeal and the same is appealed before CESTAT and pending for disposal and submitted that the above calculation shall not be treated as admitting the liability by them. The assessee also stated that since electricity and water charges are collected and paid to the utilities for corresponding services and are in the nature of re-imbursements, the same shall be excluded for assessment of tax, as held by the OIA in its Para 12(d).

4.7 Another Personal hearing was held on 20.07.2021 at 13.00 hours seeking clarification on the quantification submitted by the assessee. The representative explained the various documents submitted for the purpose of quantification. In this regard the adjudication Section wrote to the Anti evasion Section at Headquarter vide File OR.No. 64/2018-19-Sec-Adjn-JC(ST) (De novo) dated 19.07.2021 seeking examination of the documents

and quantify the amounts as per the directions of Commissioner (Appeals). The said section vide letter C.No. HQAE/V/110/2021-Sec-Misc., dated 23.07.2021 submitted their reply and the same is reproduced below:

(i) "Adjudication Section has given the following documents (soft copies) pertaining to M/s Greenwood Estates;

- IT Returns along with Balance Sheets & Profit & Loss Statement for the Assessment Years 2010-11, 2011-12 & 2012-13.
- Construction Agreement, Sale Agreement & Sale Deed for the Flats in A block.
- Ledger copies of individual customers for the FY 2010-11 & FY 2011-12

(ii) As per the directions of the Order-in-Appeal No. HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018 against the OIO No.83/2016-Adjn(ST)(ADC) dated 09.06.2017 the VAT charges, Electricity Charges & Water Charges are to be excluded from the Gross Receipts. In this regard, on examination of the records given by Adjudication Section, the VAT charges have been arrived based on the Sale Deed and the Ledgers as detailed in Annexure-I & Electricity Charges have been arrived based on Ledgers detailed in Annexure - II. The summary of the aforesaid annexures is given under;

	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011
VAT	6,66,565	7,43,084
Electricity charges	72,379	45,898
Total	7,38,944	7,88,982

(iii) The VAT charges pertain to certain flats of A Block only as per sale deeds and that of certain flats of C Block only as per Ledgers. The Electricity Charges pertain to Flats in C Block & two flats in A Block only, water charges have not been reflected in the Ledgers."

DISCUSSIONS AND FINDINGS:-

5.1 I have gone through the Commissioner (Appeals) Order (hereinafter referred as "the said order" or "order") ,Show Cause Notice, written submissions, submissions made in the hearing on virtual mode, documents submitted for quantification and other documents available on record. The

24

issue in brief is that the assessee entered into i) sale deed for sale of undivided portion of land together with semi finished portion of the flat and ii) agreement for construction, with the customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee to their customers under agreement of construction is classifiable under "Works Contract Service" under Section 65 (105) (zzzza) under Service tax as there exists service provider and receiver relationship between them. As there is transfer of property in goods in execution of the said construction agreements, it appeared that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold are taxable services under "Works Contract Service". The moot point was whether the sale deed value has to be included under the ambit of works contract and the other related points of contention were whether the VAT / STAMP DUTY, registration charges, electricity / water charges are liable to be taxed under the service tax law. There have been multiple rounds of litigation in respect of the two notices as explained above and in the process, it has come for de novo adjudication to me based on the directions of Commissioner (Appeals) in Order-in-Appeal No. Hyd-Excus-SC-AP2-0025-18-19-ST dated 27.04.2018. Accordingly, I take up adjudication of the case.

5.1.1 I find that the assessee has requested to keep the proceedings in abeyance till the disposal of appeal filed by him before Hon'ble CESTAT, Hyderabad and in this regard he has relied upon certain case laws in support of his contention. I observe that I find that as on date there is no stay against operationalisation of the Commissioner (Appeals)' order in the subject case. I have gone through the case laws submitted by him. These are on a different footing in as much as there has been a stay obtained against operationalisation of the order of remand in the case law cited by him. The other case laws are different at the substantive level. The facts and circumstances of the case dealt in this order being different, I am of the view that the case laws cited by assessee are not applicable. I place reliance on

the following case laws in support of my decision to go ahead with the adjudication as per directions of Hon'ble Tribunal. The relevant portion in the case laws is reproduced below for reference:

Anilma Associates vs Commissioner of C. EX., Delhi 2003 (154) ELT 0279
Tri-Del: The learned Counsel has not disputed that even the order of the Commissioner affirming the duty demand against the appellants, has been upheld by the Tribunal. He has no doubt stated that the validity of that order of the Tribunal has been challenged by the appellants and the matter is sub judice before the higher Court, but he has admitted that the operation of the order of the Tribunal has not been so far stayed. If that order of the Tribunal is ultimately set aside, it is only then that the appellants will become entitled to the refund of the amount deposited by them. But, at this stage, they have no right to claim the refund of the amount, so deposited when the duty demand stands confirmed against them.

Chemplast Sanmar Ltd. vs Commr. of C. Ex., Coimbatore 2004 (177) ELT 0446
Tri-Mad: We note that the decision in the case of Gujarat Ambuja Cement (supra) was cited by the party before the Commissioner as noted by him in para 54 of the order impugned, but he has endeavoured to distinguish the ratio of this ruling on the ground that the Department has filed reference application and hence the matter is sub judice. It is well settled that unless operation of a particular order is stayed by a higher forum, it has to be acted upon. Merely because the department has filed a reference application, that by itself cannot be a reason not to grant relief flowing from that particular order.

TCS E-Serve Ltd. vs Union of India 2015 (321) ELT 0564 Bom.: There is no legal provision which is brought to our notice enabling the Revenue to keep refund applications pending, merely because an order passed by the Tribunal has been challenged by the Revenue in further appeals. In the teeth of the clear language of law and there being no interim stay in favour of the Revenue, we find no justification for keeping the refund application either pending or rejecting it with the aforesaid endorsement.

5.1.2 Before I present the re-workings as per the directions laid out in the order, I shall reproduce the relevant portion of the discussions by the Commissioner (Appeals) to place the revised quantification of liability in a perspective:

"It can be inferred from the Show Cause Notices, that the assessment is made in terms of Works Contract Composition Scheme Rules on vogue at that point of time. Under the cited rules, the gross value leaves no room for exclusions, other than goods in material whose title is transferred as sale, and the sales

tax levied thereon: Since the elements whose values are sought to be included in the instant case does not fall within this ambit, there is no merit in the appellant's argument that the department's valuation is incorrect."

5.2 Thus, the issue on whether sale deed value requires to be included for the quantification under the said Rules was decided in the said order. Further, regarding other contentious issues viz., VAT, registration, stamp duty, electricity, water charges, cum-tax benefit, decisions have been pronounced in the said order. It is therefore obvious that I do not require to go into the merits of the issue and the scope is limited to re-working the quantification of the amounts as ordered.

5.3 Accordingly, I elaborate on how the amounts have been re-quantified and arrived at based on directions in the said order. It is pertinent to mention that the gross receipts is the sum total of sale deed value, agreement of construction, other taxable receipts, VAT, Stamp duty, registration charges, reimbursable expenses. Accordingly the notices calculated the tax demanded in the following manner:

As per notice	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011	Total
Gross receipts	Rs.11,65,14,336/-	Rs.11,36,37,141/-	Rs.23,01,51,477/-
Tax	Rs.48,00,391/-	Rs.46,81,850/-	Rs.94,82,241/-

5.4 I must point out that the gross receipts in the notice are in variance with what the assessee has tabulated in his written submissions. However the assessee has not substantiated the same with reasons. Therefore I am not inclined to factor in the receipts as tabulated by the assessee and instead take the gross receipts in the notice for the purpose of quantification. Now, as per the mandate in the said order, except VAT & Electricity/water charges, the rest are to be factored in for quantification and cum-tax benefit has to be extended. To implement the directions in the said order, the AE section was asked to work out the amounts under each of

the heads based on the documents submitted by the assessee for the said purpose. I observe from the AE Section's letter to adjudication section that the workings were made in the following manner. The assessee has submitted the following:

- 1) I.T Returns along with Balance Sheets & Profit & Loss Statement for the Assessment years 2010-11, 2011-12 & 2012-13;
- 2) Agreement of construction/ sale deed i.r.o residential units of Block-A;
- 3) Customer ledgers for the period 01.04.2010 to 31.03.2011& 01.04.2011 to 31.04.2012.

It was reported that the VAT details available against sale deeds and also VAT details available in part from the Customer ledgers submitted by the assessee was taken and tabulated to arrive at the VAT charges for the two periods. As regards electricity and water charges, the amounts were taken from the Customer ledgers submitted and accordingly the amounts are tabulated below:

Charges to be deducted	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011	Total
VAT charges	Rs.6,66,565/-	Rs.7,43,084/-	Rs.14,09,649/-
Electricity and water charges	Rs.72,379/-	Rs.45,898/-	Rs. 1,18,277/-
Total	Rs.7,38,944/-	Rs.7,88,982/-	Rs.15,27,926/-

5.5 This is in contrast to the amounts mentioned by the assessee in his submissions. The assessee has not provided any worksheets to show how he has arrived at the quantification for deductions as tabulated by him in written submissions. Since there is no basis for the tabulation made by the assessee, I decide to go with the department's quantification as it has taken the data made available by the assessee as the basis for arriving at the above amounts. As directed by Commissioner (Appeals), the afore mentioned amount in the foregoing table is liable for deduction from the

OR No.64/2018-19-GST-Sec-Adjn-IC(ST)(De novo)

OIO No.05/2021-22-Sec-Adjn-ADC(ST)

Date:26.07.2021

DIN-20210726Y000000000A.S.A

gross receipts. Accordingly, I hold that Rs.15,27,926/- is liable for deduction from the gross receipts.

5.6 The quantification for tax based on the workings as mandated in the said order is tabulated as under:

Particulars	Jan'10 to Dec'10 (in Rs)	Jan'11 to Dec'11 (in Rs)	Total (In Rs.)
Gross Receipts	11,65,14,336	11,36,37,141	23,01,51,477 /-
Less: Deductions			
VAT	6,66,565/-	7,43,084/-	14,09,649 /-
Other Non Taxable Receipts - (Electricity and Water Charges)	72,379/-	45,898/-	1,18,277 /-
Taxable value	11,57,75,392/-	11,28,48,159/-	22,86,23,551 /-
Net Taxable Value after considering Cum-tax benefit	11,11,94,191/-	10,83,82,788/-	21,95,76,979/-
Tax Amount @ 4.12%	45,81,201/-	44,65,371/-	90,46,572/-

5.7 Accordingly I hold that the assessee is liable to pay service tax of Rs.45,81,201/- for the period Jan, 2010 to Dec, 2010 and Rs. 44,65,371/- for the period Jan, 2011 to Dec, 2011.

5.8 As per Section 75 of the Finance Act, 1994, every person, who fails to credit the tax to the account of the Central Government within the period prescribed, shall pay simple interest for the period by which such crediting of the tax is delayed. In terms of Section 75 of the Finance Act, 1994, I hold that the assessee are liable to pay interest on the Service Tax of Rs. 45,81,201/- payable for the period Jan 2010 to Dec 2010 & Service Tax of Rs. 44,65,371/- payable for the period Jan 2011 to Dec 2011.

5.9 Considering the assessee has provided taxable service during the period from Jan, 2010 to Dec, 2010 & Jan 2011 to Dec 2011 but have not paid Service Tax on the value of the taxable services rendered during the said period, I hold that they are liable for imposition of penalty under Section 76 of the Finance Act, 1994. Further, as they have failed to declare the right income from the taxable services rendered by them in their ST-3 returns they are liable for penalty under Section 77 (2) of the Finance Act, 1994.

6. Accordingly I pass the following order:-

ORDER

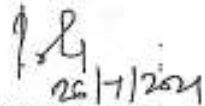
(a) In respect of Show cause notice O.R.No.61/2011-Adin.(ST) dated 23.04.2011

- (i) I confirm the demand of an amount of Rs 45,81,201/- (including Cess) [Rupees Forty Five Lakh Eighty One Thousand Two Hundred and One only] being the Service Tax payable on the taxable services rendered during the period from January 2010 to December 2010, in terms of sub-section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad.
- (ii) In terms of Section 75 of the Finance Act, 1994, I order M/s.Greenwood Estates to pay interest at appropriate rates, on the Service Tax payable as mentioned at Sl.No. (i) above.
- (iii) I impose a penalty of Rs.4,58,120 /- [Rupees Four Lakh Fifty Eight Thousand One Hundred and Twenty only] (being 10% of the ST payable) on M/s.Greenwood Estates, Hyderabad, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax.
- (iv) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s Greenwood Estates, Hyderabad, under Section 77 of the Finance Act, 1994, for failure to declare the right taxable incomes in their ST-3 return.

27

(b) In respect of Show cause notice O.R.No.52/2012-Adjn.(ST) dated 24.04.2012

- (v) I confirm the demand of an amount of Rs 44,65,371/- /- (including Cess) [Rupees Forty Four lakh Sixty Five Thousand Three Hundred and Seventy One only] being the Service Tax payable on the taxable services rendered during the period from January 2011 to December 2011 , in terms of sub-section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad
- (vi) In terms of Section 75 of the Finance Act, 1994, I order M/s Greenwood Estates to pay interest at appropriate rates, on the Service Tax payable as mentioned at SLNo. (i) above.
- (vii) I impose a penalty of Rs.4,46,537 /- [Rupees Four Lakh Forty Six Thousand Five Hundred and Thirty Seven only] (being 10% of the ST payable) on M/s. Greenwood Estates Hyderabad, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax.
- (viii) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s.Greenwood Estates, Hyderabad, under Section 77 of the Finance Act, 1994, for failure to declare the right taxable incomes in their ST-3 return.


(G. RASHMI)
ADDITIONAL COMMISSIONER

To,

✓ M/s. Greenwood Estates
5-4-187/3 & 4, II Floor
MG Road, Secunderabad - 500003,
Telangana State.

(By RPAD)

Copy submitted to the Commissioner, Central Tax, Secunderabad GST Commissionerate, Hyderabad.

63

OR No.64/2018-19-GST-Sec-Adjn-JC(ST)(De novo)

OIO No.05/2021-22-Sec-Adjn-ADC(ST)
Date:26.07.2021
DIN-20210756Y0000000A5A

Copy to:-

1. The Deputy Commissioner, Central Tax, Secunderabad GST Division
Secunderabad Commissionerate.
2. The Assistant Commissioner (Arrears), Central Tax, Hqrs. Office,
Secunderabad Commissionerate.
3. The Superintendent of Central Tax, Ramgopalpet-1 GST Range,
Secunderabad GST Division.
4. Master Copy / Spare Copy / Office Copy.

Annexure VI

Re: Greenwood Estates documents

Jaya Prakash <jayaprakash@modiproperties.com>

Fri 6/18/2021 11:55 AM

To: jeetsingh2014@gmail.com <jeetsingh2014@gmail.com>

Cc: Soham Modi <sohammodi@modiproperties.com>; CA Venkataprasad <venkataprasad@hiregange.com>; CA Laxman Hyderabad <laxman@hiregange.com>

3 attachments (4 MB)

FY 2015-16.PDF; FY 2016-17.PDF; FY 2017-18.pdf

Dear Subject Sing

As per your request for ITR copies for the period 2015-16, 2016-17 & 2017-18 I enclosed to you

Regards,

M Jayaprakash

Sr. Manager - Accountants | +91 95022 88200 jayaprakash@modiproperties.com

Modi Properties Pvt. Ltd. | www.modiproperties.com

5-4-187/3 & 4, M G Road, Secunderabad - 03 | +91 40 66335551

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On Wednesday, June 9, 2021, 09:33:38 AM GMT+5:30, Jaya Prakash <jayaprakash@modiproperties.com> wrote:

Dear Subject Singh

As per your request letter dated 04.06.2021 towards requesting documents against SCN No.V/24/15/7/2018/Adjn., dated 17.04.2018 pertaining period from Apr 2015-2017 (Upto Jun'17)

I am enclosing excel sheet towards receipts received from customers flat wise and receipt wise and also split before OC receipts and After OC receipts for your record.

Regards,

M Jayaprakash

Sr. Manager - Accountants | +91 95022 88200 jayaprakash@modiproperties.com

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ANNEXURE - ⁴⁷¹¹
Hiregange Associates LLP
Chartered Accountants



Date: 23.07.2021

To
The Additional Commissioner of Central Tax,
Secunderabad GST Commissionerate,
GST Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad-500 004

Dear Sir,

Sub: Submission of documents after personal hearing

Ref: Remand Submissions filed consequent to Order-in-Appeal No. HYD-EXCUS-
SC-AP2-0025-18-19-ST dated 27.04.2018

1. We have been authorized by M/s. Greenwood Estates to represent before your good office and to do necessary correspondence in the above referred matter.
2. In this regard, we are herewith submitting the following in Pen drive as requested
 - a. Sale Deed copied entered with the customers during 01-01-2010 to 31-12-2011
 - b. Agreement of Construction entered with the customers during 01-01-2010 to 31-12-2011
 - c. Ledger accounts for the period April 2010 to March 2012
3. We request you to take the same on record and let us know any other information is required.

Kindly acknowledge the receipt of the reply

Thanking You,

Yours faithfully,

For Hiregange Associates LLP
Chartered Accountants


Venkata Prasad P
Partner



Enclosure: Pen Drive containing copies of sale deed, agreement of construction and Ledger copies of customers

4th Floor, West Block, Srida Anushka Pride, Above lawrence & Mayo,
Road No. 12 Banjara Hills, Hyderabad, Telangana - 500034; sudhir@hiregange.com
Bangalore | Hyderabad | Visakhapatnam | NCR - Gurgaon | Mumbai | Pune | Chennai | Guwahati | Noida
| Kolkata | Vijayawada | Raipur | Kochi | Indore
Website: www.hiregange.com

*Received copy
Dated 23/7/21
Sudhir (Aetm)*

Hiregange Associates LLP
Chartered Accountants

ANNEXURE-VIII



Date: 29.06.2021

To

The Additional Commissioner of Central Tax,
Secunderabad GST Commissionerate,
GST Bhawan, L.B. Stadium Road,
Basheerbagh, Hyderabad - 500 004

Dear Sir,

Sub: Reply to letter dated 04.06.2021

Ref: Your letter dated 04.06.2021 pertaining to SCN No.V/24/15/7/2018-Adjn
dated 17.04.2018 issued to M/s. Greenwood estates

1. With reference to above, we have received the above referred letter dated 04.06.2021 asking us to submit the following information:
 - a. Statement showing the Customer wise receipts along with details of amounts received before receipt of Occupancy Certificate and after receipt of Occupancy Certificate
 - b. Copy of sales ledger
 - c. Copies of Sale deeds and Agreement of Construction
2. In this regard, we wish to submit that the following information was submitted over E-mail to jeetsinghg2014@gmail.com on 09.06.2021 and 18.06.2021
 - a. Statement showing the Customer wise receipts along with details of amounts received before receipt of Occupancy Certificate and after receipt of Occupancy Certificate
 - b. Copies of Income Tax returns for the financial years 2015-16, 2016-17 and 2017-18
3. Further, the copies of sale deeds, agreement of construction and sales ledgers were submitted in a CD format to Mr. Sajeet Singh, Inspector. Hence, we request your good self to confirm whether the above referred information is



Bangalore | Hyderabad | Visakhapatnam | NCR - Gurgaon | Mumbai | Pune | Chennai | Guwahati | Noida |
Kolkata | Vijayawada | Raipur | Kochi | Indore

Hiregange Associates LLP
Chartered Accountants



received or not. If the same is not received, we are glad to submit the same again.

We shall be glad to provide any other information required in this regard. Kindly acknowledge the receipt of the above.

Thanking You,

Yours Truly,

For M/s. Hiregange & Associates LLP
Chartered Accountants

K. Lakshman Kumar
Lakshman Kumar K
Chartered Accountant



*Received copy
29/6/21
gupta (Adm.)*

Bangalore | Hyderabad | Visakhapatnam | NCR - Gurgaon | Mumbai | Pune | Chennai | Guwahati | Noida |

Kolkata | Vijayawada | Raipur | Kochi | Indore



आयुक्त(अपील-II) जीएसटी, व केन्द्रीय उत्पाद शुल्क का कार्यालय
OFFICE OF THE COMMISSIONER (APPEALS-II), GST & CENTRAL EXCISE
7 वीं मंजिल, जीएसटी भवन, एल बी स्टेडियम रोड
7th FLOOR, GST BHAVAN, L B STADIUM ROAD

बशीर बाग, हैदराबाद, तेलंगाना राज्य-500004 :: BASHEER BAGH, HYDERABAD, TS-500004
TELEPHONE: 040-23234271/232331160 email: commrappl-sthyd@nic.in Fax No.040-23237872

अपील नं: Appeal No: 32 / 2017 (SC) ST

अपील आदेश नं: ORDER-IN-APPEAL NO: HYD-EXCUS-SC-AP2-0025-18-19-ST DATED 27.04.2018

पाठ करने वाले अधिकारी : श्री. बी.वी.टी.टी. प्रसाद नायक, आयुक्त (अपील-II), हैदराबाद

Passed by : Sh. B.V.T PRASAD NAIK, COMMISSIONER (APPEALS-II) HYDERABAD

प्रस्तावना PREAMBLE

1. आदेश दिवसे जय जारी किया गया है उस व्यक्ति के निजी उपयोग के लिए यह प्रति मुक्त में दी जाती है।
This copy is granted free of cost for the private use of the person to whom it is issued.
- 2.(i) कोई भी निजी/प्राइवेट इस आदेश से अपवाद हो जो वे बिना अधिनियम, 1994 की धारा 86 के अंतर्गत प्रमाणित, उत्पाद शुल्क व सेवाकर अंतर्गत अधिनियम, क्षेत्रीय बैंक, प्रथम चर, हैदराबाद मेट्रो नगर प्राधिकरण और सीबीएसई बोर्ड इलाहाबाद (सीबी) के हिस्से, खैरातबाद, हैदराबाद, तेलंगाना-500004 के समस्त अधिकृत अधिकारी कर सकते हैं।
Any assessee 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.(ii) केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 एक के खंड (iii) के अनुसार, धारा 85 की उप-धारा (5) में संशोधित आदेश या निर्णय के विरुद्ध अपील के लिए, अपीलकर्ता को निर्णय या बिना आदेश के विरुद्ध अपील की गई हो उसके अनुसरण के लिए कर का, ऐसे मामले में जहां कर या कर और बंध विपरीत हो, या बंध का, जहां ऐसा बंध विपरीत हो, उस प्रतिकूल बना करना होगा: सेवा कर के मामलों में, धारा 8, 1994 की धारा 81 के प्रस्ताव से अधिनियम की धारा 35 एक 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. उन धारा (1) [या उन धारा (2) या उन धारा (2A)] के अंतर्गत प्रत्येक अपील बिना आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निजी/प्राइवेट इस आदेश करने की शर्तों से तीन महीने के भीतर (मुख्य आयुक्तों या आयुक्तों की सविधि) के समस्त, जैसे भी शर्तों को, बना लिया 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 three months of the date on which the order sought to be appealed against was received by the assessee, the [Committee of the Commissioner], as the case may be.
4. धारा 2 में जलियात अपील एस.टी. 5/ एस.टी. 7 श्रेणियों में चार प्रतियों में बिना आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निजी/प्राइवेट की धारा प्रतियों की शर्तों से तीन महीने के भीतर किया जा सकता है। बिना आदेश के विरुद्ध अपील किया जाना चाहता हो और अपील करने के लिए निर्दिष्ट रूप आदेश की उस आदेश की चार प्रतियाँ संलग्न होने चाहिए (प्रतियों 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; 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. अपील के साथ ट्रिपल कोप के रजिस्ट्री बैंक के सरकारी बैंक के चर में जहाँ ट्रिपल कोप है वहाँ के किसी भी कम्प्यूटर बैंक भी खाना हो प्राप्त किए गए रजिस्ट्री बैंक कोप कोप होने चाहिए और अधिनियम की धारा 86 के अंतर्गत निर्दिष्ट शुल्क के भुगतान कर प्रमाण भी संलग्न होने चाहिए।
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 fee payable are as under:-

(क) जिस मामले में अपील संबंधित हो उस मामले में मांगा गया सेवा कर और व्याज तथा जुर्माना भी केन्द्रीय अपील मुक्त अधिकारी द्वारा लगाया गया हो और पचास लाख से अधिक हो तो, रुपये एक हजार;

(d) 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 में अपील संबंधित हो उस मामले में मांगा गया सेवा कर और व्याज तथा जुर्माना भी केन्द्रीय अपील मुक्त अधिकारी द्वारा लगाया गया हो और पचास लाख से अधिक, लेकिन रुपये पचास लाख से कम हो तो, रुपये पांच 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 में अपील संबंधित हो उस मामले में मांगा गया सेवा कर और व्याज तथा जुर्माना भी केन्द्रीय अपील मुक्त अधिकारी द्वारा लगाया गया हो और 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) मसौ की धारा 86 की उप धारा (4) के अंतर्गत माहए गए मुक्त आयातियों के ह्रास के संबंध में कोई शुल्क देव 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. अपीलार्थी ट्रेडिन्ग के दफ्तर प्रस्तुत किए गए सभी आवेदन के साथ: Every application made before the Appellate Tribunal:

(क) ऐपल की रद्दी के लिए अपील या मसौ को चुकाने के लिए अथवा किसी अन्य प्रयोजन के लिए आवेदन पर; या

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(ख) किसी अपील या आवेदन को पुन: स्थापित करने के लिए उसके साथ हर पांच सौ का शुल्क देने सहित।

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees;

- 6.(i) इस उप धारा के अंतर्गत आनुक द्वारा माहए गए आवेदन के मामले में कोई शुल्क देव नहीं है।
No fee is payable in case of an application filed by Commissioner this sub-section.

7. केन्द्रीय अपील मुक्त अधिनियम, 1944 और केन्द्रीय अपील मुक्त विनियम, 2002 तथा छीफ़ाफ़ाल, केन्द्रीय अपील मुक्त न सेवा कर अपीलार्थी ट्रेडिन्ग (प्रक्रिया) विनियम, 1982 में स्थापित सभी और अन्य संबंधित मामलों को निर्धारित 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.

This appeal is filed by M/s Greenwood Estates, 5-4-167/3&4, 2nd Floor, M.G. Road, Secunderabad - 500003 (herein after referred as 'appellant') against Order-in-Original No. 83 / 2016 - Adjn (ST)(ADC) dated 09.08.2017 (In O.R.No. 61/2011 - Adjn(ST)ADC Gr.X, O.R. No.52/2012 - Adjn (ST)(ADC), New O.R.No. 26/2014 - Adjn (ST)ADC) C. No. IV/19/19/2011 ST(Gr-X)). (hereinafter referred to as the impugned order) passed by the Additional Commissioner, (erstwhile) Hyderabad Service Tax Commissionerate, presently under the jurisdiction of Secunderabad GST Commissionerate, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad TS-500004 (hereinafter referred to as Adjudicating Authority).

2. The facts of the case in brief are that:-

- * The appellant, a partnership firm, is engaged in providing Construction of Complex, and Works Services and are registered with the Department, holding STC No. ST001.

There is a dispute on whether amounts paid as consideration for the work already completed are reflected in documents, after which the construction agreement is executed is to be included or not, and as to whether electricity connection charges (recovered from buyers) are to be included or not.



74

be included. A notice HQPOR No. 77/2010 - Adjn (ST) dated 21.05.2010 was issued for the period January, 2009 to December 2009 involving an amount of Rs.9,47,737/-. The same was adjudicated and the demand was confirmed vide Order-in-Original No. 47/2010 - ST dated 24.11.2010. The appeal on the impugned order was dismissed by the first Appellate Authority.

- Further periodic notices were issued - for the period January 2010 to December 2010 vide notice dated 23.04.2011 demanding an amount of Rs.48,00,391/- and another for the period January 2011 to December 2011 vide notice dated 24.04.2012 demanding an amount of Rs.46,81,850/-. These notices were adjudicated by the Additional Commissioner, Hyd - II Commissionerate vide OIO No. 51/2012 - Adjn (ST) ADC dated 31.08.2012 confirming the demands. The OIO dated 31.08.2012 was agitated at this forum in the first round of litigation, and was dismissed by the Commissioner (Appeals) vide Order-in-Appeal No. 39/2013 (H - II) S. Tax dated 27.02.2013 concurring with the findings of the lower authority on merit while modifying the order in terms of the quantification of the Service Tax and the penalty imposed. The Order-in-Appeal was then challenged before the Hon'ble Tribunal, who set aside the OIA in FO No.20401/2010 dated 25.03.2014, remanding the issue for being decided afresh by the Original Authority taking into the directions of the Commissioner (Appeals) in cases where there was not dispute.
- The Adjudicating Authority in the de novo proceedings arising from the remand ordered by the Tribunal as well as this forum, heard the appellant and passed the de novo adjudication order impugned herein, holding that the appellant was liable to pay tax on the construction of residential complex service. Regarding the quantification of the service tax demand for which the remand was made by the Commissioner (Appeals), it was held that the appellant had not submitted the amounts received supported by any documentary evidence and hence the figures mentioned in their submissions dated 22.12.2015 [Para 4.8 of the OIO impugned herein] were not acceptable; that the figures submitted by the appellant to the various fora were also inconsistent as detailed in the impugned order. The demand was confirmed in respect of the two notices dated 23.04.2011 & 24.04.2012 culminating in this appeal.

3. The appellant agitated the demands on the following grounds:

- That the impugned order was illegal and untenable in law;
- That the impugned order had confirmed the demand on amounts received towards sale deed value, going beyond the notice inasmuch as the notice itself states that the demand is not made on the amount received towards sale value vide para 3 of the notice "as there is involved the transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreement of construction in each of their customers to whom the land was already sold vide sale deed are taxable services under Works Contract Services."
- That the notice intended to demand Service Tax only on amounts received towards construction agreements entered with the customer but not on the amounts received towards sale deed value; that they rely on the case of Commissioner vs Shilal International [2010(259) ELT 165 S.C];
- That para 17 of the Original Order-in-Original also accepted that no Service Tax shall be demanded on sale deed value but in the impugned Order-in-Original, the Adjudicating Authority has taken a different view which is contrary to the law;
- That the Adjudicating Authority has not considered the case afresh as ordered by the Tribunal but passed the impugned order solely based on the information submitted during the first stage of the adjudication and has not heard the appellant in a reasonable manner and hence needs to be set aside;
- That regarding the non-matching of the amounts as pointed out in the findings of the Adjudicating Authority, it is submitted by them that while submitting information during the proceedings the appellant submitted the

HYD-EXCUS-SC-APP2-2025-18-19-ST DATED 27.04.2018

Page 3 of 10



- details without availing the deductions of consideration received towards certain amounts, during their submissions dated 22.12.2015 for de novo afresh, the appellant availed the deductions and hence there was a difference between the amounts; that as the Tribunal had directed for decision afresh, the Adjudicating Authority could not compare the figures with the first adjudication to confirm the demand; that the Adjudicating Authority could have asked for information before deciding the case;
- That the Adjudicating Authority had not made attempt to understand the transaction undertaken by the appellant and the scope of different agreements entered with the customer and confirmed the demands based on the extracts of the Finance Act, 1994;
 - That the CBEC vide circular 151/2/2012 dated 10.02.2012 clarified the applicability of Service Tax in light of various models of business and opined that the activity of the builder / developer prior to 01.07.2010 was not taxable; that the order had not specified any reason as to why the construction service provided by the builder prior to 01.07.2010 was liable to Service Tax when the clarification by the Board was issued;
 - That they referred to the decision in the case of Krishna Homes vs Commissioner [2014 (34) STR 881 (Tribunal)] which analysed the issue as to the applicability of Service Tax on construction services when agreements were entered into for construction of residential units and possession was handed over on completion of the construction after full payment was made by the customer; relevant portion of para 9 of the order was reproduced; they also relied on other case laws cited;
 - That in terms of the Notification No. 38/2010 - ST dated 28.06.2010, if value towards any service has been received before 01.07.2010, Service Tax on such value is exempted; that by virtue of the agreement with the customers, consideration for provision for residential complex service had been received prior to 01.07.2010 even though flats were handed over subsequently;
 - That until the amendment, it was understood that contractor / designers were alone liable for Service Tax which was the specific clarification of the CBEC vide circulars cited supra;
 - That the term construction of residential complex is defined under Section 65(30a) of the Finance Act, 1994 as reproduced; that the construction of the semi-finished flat was provided for the owner of the semi-finished flat / customer who in turn used such flat for his personal use and therefore the same was excluded from the definition of construction of complex service; that they refer to the circular No. 108/2/2009 - ST dated 29.01.2009 to emphasize that construction for personal use fell in the ambit of the exclusion portion of the definition of residential complex as defined under Section 65(31a) of the Finance Act, 1994; that they submit the relevance of the circular clarifying the exemption for a residential complex and residential unit and the scenario under which the Service Tax is not payable; that as the exemption is granted through Circular No. 108/2/2009 - ST dated 29.01.2009, the same cannot be denied on unreasonable grounds and wrong interpretation;
 - That they also rely on the Board's clarificatory letter in F. No. 81/6/2005 - TRU dated 27.07.2005 in para 13.4 which is reproduced to emphasize that the activity of construction of a residential complex intended for personal use as residence by directly availing the services of a construction service provider was not liable to service tax;
 - That they submit that there was no service tax on sale of semi-finished flat; that para 3 of the notice dated 24.04.2012 as quoted and admits the fact that only services rendered by the appellant after execution of the sale deed against agreements of construction to each of their customers was liable for Service Tax under VCS and it was accepted that Service Tax was not applicable for the sale of semi finished flat; that while quantifying the demand, the gross receipts which also includes the amount received for the sale of semi-finished flat was considered and the appellant submits that the proposition of the notice demanding Service Tax on sale of semi-finished flat is not sustainable and requires to be dropped;
 - That though in the Order - In - Original No. 51/2012 - Adn ST ADC dated 31.08.2012, it was accepted that Service Tax was not demanded on the sale deed value but while quantifying the demand it has included the amounts received towards the sale deeds; that in the de novo proceedings, the impugned order has taken a completely different view that the amounts towards sale deeds were also taxable; that the impugned order is based on rough estimates and the U-turn of the Adjudicating Authority is not tenable and is required to be set



HYD-EXGUS-SC-AP-2-CC-25 18-19-ST DATED 27.04.2018

- That the sale of the semi-finished flat is transfer of immovable property was not liable to Service Tax and that the proposition of the notice demanding Service Tax on the appellant was not sustainable and required to be dropped;
- That the sale deed was executed for the semi-finished flat and represents the construction work already done prior to the booking of the flat by the prospective buyer and the work done until then is work for self on which there is no service tax; that further to a works contract, there should be a contract and any work done prior to entering of such contracts cannot be brought into the realm of the works contract; that reliance was placed on the Apex Court judgment in the case of LAT Ltd., vs State of Karnataka [2014 (34) STR 481 (SC)], ChD Developers vs State of Haryana & others [2015 - TIOU - 1521 - HC - P&H - VAT] in this regard;
- That other non-taxable receipts like corpus fund, Electricity deposit, water charges, service tax etc., were not liable and hence shall not be included in the taxable value and that the impugned order confirmed demand on the same on the ground that the appellant had not provided the proof or evidence of the said amounts pertaining to VAT, registration charges, electricity charges etc.; defining the above mentioned payment heads in their grounds, they submitted that these charges were other non-taxable receipts being statutory charges / deposit and were mere reimbursements of expenses / charges incurred paid on behalf of the customers and does not involve any provision of service and hence the same is to be excluded from the taxable value as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2008; they rely on the case of ICC Realty & Others vs CCE [2013 (23) STR 427 (Tri Mun)], Karnataka Trade Promotion Organisation vs CST 2016 - TIOU - 1783 - CESTAT - BANG and hence submitted that the demand did not sustain to that extent;
- That vide para 4.7 of the impugned order it was stated that there was no support of any evidence in respect of the charges which was not correct as they had submitted the documents evidencing the same during the de novo proceedings in 2015 itself and hence the same needs to be set aside;
- That in case any tax demand stands confirmed for the subject period, the amounts received towards construction agreement only should be taxed and not the total amount received which was in line with the notice dated 24.04.2012 & 23.04.2011 for the periods January 2011 to December 2011 & January 2010 to December 2010 respectively;
- That the details of the same confirmed vide Order - in - Original No. 51/2012 - Adn ST ADC dated 31.06.2012 vide para 17 was tabulated by them in their grounds; that the details of the liability and the payments made by the appellant were as in para 55 of their grounds which are reproduced below:

PARTICULARS	JAN 10 TO DEC 10 (Rs)	JAN 11 TO DEC 11 (Rs)
Gross receipts	106462565	108665267
Less: deductions		
Sale deed value	40744817	42944826
VAT, regn charges, stamp duty and other non-taxable receipts	11148364	9823950
Taxable value	54569384	56196691
Abatement @ 60%	32741750	33718000
Net taxable value	21827633	22478692
Service Tax @ 10.3%	2248267	2315303
Actually paid	2465653	2311233
Short / (Excess) paid	(221286)	4070

- That the above referred details were submitted to the Adjudicating Authority by the appellant vide letter dated 22.12.2015 along with documentary evidences supporting their claim in CD form and requested to re-quantify the demand but the same was not considered while confirming the demand; that as the demand was confirmed without considering the information submitted by the appellant, the order is required to be set aside;
- That the impugned order also stated that they had represented the factum of quantum of receipts before the various authorities but they stated that the same was clear from the background of facts submitted that the difference between the amounts submitted at the stage of adjudication and with the letter dated 22.12.2015

HYD-EXCUS-SC-AP2-0025-19-19-ST DATED 27.04.2018

Appeal No. 32/2017 (SC)ST

was due to the reason that the details submitted during the original proceedings were based on manual records maintained recording receipts from each customer and the computerised records maintained thereafter which was submitted on 22.12.2015;

- That the initial payments were made on adhoc basis and there was no proper bifurcation until a consensus was arrived at before executing the agreements and hence the difference between the initial submission and submission dated 22.12.2015;
- That the Adjudicating Authority could have sought clarification on the differences and if the appellant had not responded the same could have been decided then; that the allegation made now had to be set aside;
- That cum tax benefit under Section 67 is required to be extended to them if the demand for sale of semi-finished contract is confirmed under Works Contract Service as the appellant had not collected Service Tax from the customers; that they rely on the case laws cited in this regard;
- That the Service Tax itself not being payable, question of interest does not arise as held by the Apex Court in the Prathiba Processors case;
- That penalty could not be imposed as merely automatic consequence of failure to pay duty; that they were under bona fide belief that the amounts received towards sale deeds were not subject to Service Tax and wish to rely on the decisions in this regard;
- That the benefit of Section 80 of the Act is to be extended to them in view of the reasonable causes of the given understanding of law, payment of duty voluntarily on whatever was believed as taxable and the divergent views of the courts on the issue;
- They request for the setting aside of the order and grant consequential relief.

4. I have heard the appellant on 15.03.2018, represented by Shri. P. Venkata Prasad, Chartered Accountant, who reiterated the submissions made in their grounds of appeal and had nothing more to add.

FINDINGS:

5. I have carefully perused the notice, impugned order and the submissions made by the appellant. I find that the appeal has been filed with a delay of thirteen (13) days for which the appellant has submitted that the concerned employee was not coming regularly to the office as a person in their family was hospitalized and therefore were unable to provide the information to the consultants within the due date for drafting the appeal. They regretted the same and requested for condonation. I have carefully considered the plea for condonation and find reasonable cause to admit the appeal under the proviso to Sec 85(3A) for a decision on merit.

6. Perusal of the records show that the appellant is registered with the Department for payment of Service Tax for the services 'Works Contract Services'. Intervention of the Department revealed that the appellant had entered into Sale deed for sale of undivided portion with the semi-finished portion of the flat and thereafter, an agreement for construction with the buyer of the flat.



2025-18-19-ST DATED 27.04.2018

7. The Department contended in the notices that on execution of the sale deed the right in the property got transferred to their customers and hence the construction service rendered by the appellant thereafter to their customers under agreement was taxable service as there existed service provider to service receiver relationship between them and this service rendered by them after execution of the sale deed against the agreement of construction to each of their customers to whom the land was already sold was taxable under 'Works Contract Service'. This being the case, Service Tax was arrived at in the notices as follows:

1. Notice dated 23.04.2011 - at para 6 of the notice - Tax of Rs.48,00,391/- on the total amount of Rs.11,65,14,336/- received against agreements of construction during the period January 2010 to December 2010;

2. Notice dated 24.04.2012 - at para 5 of the notice - tax of Rs.46,81,850/- on the total consideration of Rs.11,36,37,141/- received by them during the period January 2011 to December 2011; the appellant submitted Service Tax paid challan copy dated 27.11.2011 for Rs.5,98,671/-;

8. Based on the above, the Service Tax liability was worked out and the demands raised for the periods mentioned in the notices. The appellant aggrieved by this, protested against the inclusion of the sale deed value for the purpose of demand and made their submissions. The matter was decided by the Adjudicating Authority in Order-in-Original dated 31.08.2012 which was appealed against by the appellant to the first appellate Authority who remanded the matter back for re-quantification of the demand. The matter was carried to the Tribunal by the appellant who remanded the matter to the original authority for de novo adjudication. The matter was heard and impugned order passed by the Adjudicating Authority based on the submissions of the appellant holding that the re-quantification submitted by the appellant was without basis and not supported by documentary evidence and the submissions vide their letter dated 22.12.2015 could not be accepted and hence the demands were to be confirmed. The basis of the impugned order was in holding the appellant liable to ST on construction of the residential complex in view of the definitions under Section 65(91a) and 65(105)(zzzza) of the Finance Act, 1994 being applicable to them read with Circular No. 108/2/2009 - ST dated 28.01.2009. Accordingly the order is passed and has culminated in this appeal.

9. The appellant in their submissions accept that they are liable to discharge Service Tax on the construction agreements thereby accepting Service Tax on activity as proposed by the impugned notice. It is therefore not in dispute upon examination of the impugned notices that, the demand has been made for the activity after the sale deed has been executed, under the category of Works Contract Service. The impugned order however has held that the appellant was under no obligation to pay Service Tax on residential complex services and the amounts received by them was to be the gross value which would be considered for the tax demand. I find that the Adjudicating Authority has transgressed the boundaries of the notice to decide the

classification of the services provided by the appellant and when the demand was restricted to that service, i.e., Works Contract Services. The same is accepted by the appellant; however, the dispute in their case was not of classification, but in respect of the inclusion of the "other amounts" received towards sale deed, VAT, registration charges etc. When the Adjudicating Authority holding that the services were under construction services, he did not qualify the amounts claimed by the appellant for the exclusion; and also held that the appellant was unable to submit any proofs or evidence in respect of the exclusions claimed, rejecting the submissions.

10. In this regard, I find that the classification of the service was not under dispute as the previous Adjudicating Authority and Appellate Authorities, (first Appellate Authority & the Tribunal) have not interfered with the same. Further, the decision was bound within the four walls of the notice which demanded the tax on Works Contract Services. Therefore the Adjudicating Authority had to decide the quantification of the tax demand, albeit denovo, by considering all the evidences. I further find that the appellant in their grounds of appeal (at para 56) submit that the quantification of demand was erroneous in view of the non-consideration of the proof / evidences submitted by them in form of CD. The submissions of the appellant have to be given a serious thought. Be that as it may, I find that the ground on which the Adjudicating Authority has quantified the demand is erroneous and requires reconsideration, within the four walls of the notice, to examine the validity and quantum of the demand. It can be inferred from the Show Cause Notices that the assessment is made in terms of Works Contract Composition Scheme Rules, in vogue at that point of time. Under the cited rules, the gross value leaves no room for exclusions, other than goods in material whose title is transferred as sale, and the sales tax levied thereon. Since the elements whose values are sought to be included in the instant case does not fall within this ambit, there is no merit in the appellant's argument that the department's valuation is incorrect. Even for the period beyond 01.07.2012, when the composition rules were scrapped and Rule 2A of the Service Tax Valuation Rules underwent a retrospective amendment by Section 129 of the Finance Act, 1994 read with the sixth schedule thereunder; the said amendment is restricted only to the land value in a composite works contract. In the instant case, however, the assessment (proposed in the notices) is not under the Service Tax Valuation Rules, but under the Works Contract Composition Scheme Rules. Ergo, the demand is sustained under WCS category during the material period.

11. 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 is unaffected. It is only the inclusion of the value of the sale deed (including unfinished flat built on composite contract of land+unfinished flat) as well as elements like registration charges, 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; hence the order is non-speaking in this regard. The submissions of the appellant regarding the quantification of the value of the contract supported by proper documentation therefore merits being re-examined by the lower authority. In the interest of justice, the matter has to be remanded back to the Adjudicating Authority for the express purpose of arriving at the value of the contract under the Works Contract Services undertaken by the appellant to correctly assess the tax liability. The appellant is also directed to submit the details to the Adjudicating Authority for perusal during the hearing granted to them in accordance with the principles of natural justice. I rely upon the rulings pronounced in the case of CCE, Panchkula vs Goel International Pvt Ltd [2015(39) STR 330 (Tri Del)] and CST vs Associated Hotels Limited [2015 (37) STR 723 (Guj)] in ordering the remand.

12. In view of the discussions recorded above, para 5(a)(i) and 5(b)(i) of the impugned order is set aside and remanded to the Adjudicating Authority who is directed to:

- (a) Examine the evidence presented in the CO regarding the appellant's residential unit-wise liability under the composition scheme;
- (b) The elements of VAT (if any), and value of goods whose title stands transferred as sale alone is excludible, the same may be excluded;
- (c) Registration charges / stamp duty are not excluded in the composition scheme, hence includible for assessment to WCS; it is expressly clarified that land is not 'goods' for the purpose of the Composition Scheme, and the land value mentioned in the sale deed is includible for assessment under the composition scheme;
- (d) 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 the levy, as settled by the Apex Court in UNION OF INDIA VERSUS INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD. [2018 (10) G.S.T.L. 401 (S.C.)]; therefore I hold that the same shall be excluded for assessment to tax; and that cum-tax benefit shall be extended under Sec 67(2) on the values included from the sale deed.
- (e) Interest, a quintessential liability accompanying belated payment of tax, is to be computed on such modified tax liability arrived at supra. Para 5(a)(ii) and 5(b)(ii) of the impugned order stands modified accordingly;
- (f) Penalty under Sec 76 has been adjudged on 09.06.2017, and the penal provision as amended on 14.05.2015 shall apply, as mandated by Sec 78B. Therefore, Para 5(a)(iii) and 5(b)(iii) of the impugned order stand modified to the effect that the quantum of penalty under Sec 76 in each notice is restricted to 10% of the tax liability computed in the de novo proceedings in compliance with this remand.

The impugned order stands modified to the extent discussed supra and the appeal is partly allowed by way of remand.



(सि.टी.टी. प्रसाद नाक)
S. V. T. PRASAD NAKK
आयुक्त (अपील-II), हैदराबाद
Commissioner (Appeals-II)
Hyderabad

अतिरिक्त: Appeal No. 32/2017 (SC)ST

By SPEEDPOST To

1. M/s Greenwood Estates, 5 - 4 - 187/ 3&4, 2nd Floor, M.G. Road, Secunderabad - 500033.

2. M/s. Hiregange & Associates, HIREGANGE & ASSOCIATES, Chartered Accountants, 4th Floor, West Block, Sride Anushka Pride, Opp. Ratnadeep Supermarket, Road Number 12, Banjara Hills, Hyderabad, Telangana 500034.

Copy Submitted to: The Chief Commissioner, Central Tax & Customs, Hyderabad Zone, Hyderabad.

Copy to

1. The Commissioner of Central Tax & GST, Presently Secunderabad Commissionerate, (Enshrine Service Tax Commissionerate) GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad, TS-500004. (Jurisdictional Commissioner)

2. The Additional Commissioner, Secunderabad Commissionerate, (Enshrine Service Tax Commissionerate), GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad, TS-500004. (Respondent)

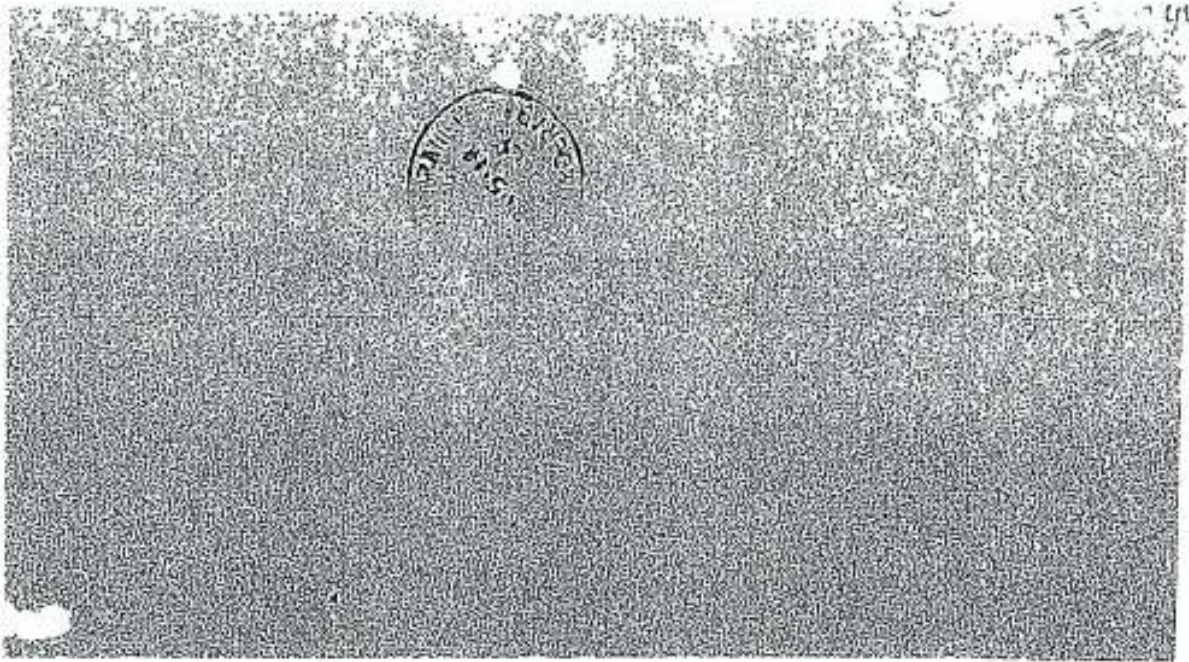


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For Hiregange & Associates
Chartered Accountants

Venkat Prasad. P
Partner
M.No: 236558





Annexure - X

FORM ST-4

Form of Appeal to the Commissioner (Appeals-II)

[Under Section 85 of the Finance Act, 1994 (32 of 1994)]

**BEFORE COMMISSIONER (APPEALS-II), 7TH FLOOR, L.B STADIUM ROAD,
BASHEERBAGH, HYDERABAD-500 004**

(1) Appeal No.	of 2017
(2) Name and address of the Appellant	M/s. Greenwood Estates, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad-500003
(3) Designation and address of the officer Passing the decision or order appealed against and the date of the decision or order	Additional Commissioner of Service Tax, Service Tax Commissionerate, 11-5423/1/A, Sitaram Prasad Towers, Red Hills, Hyderabad-500004 [Order-In-Original No. 83/2016-Adjn(ST)/(ADC) dated 09.06.2017]
(4) Date of Communication to the Appellant of the decision or order appealed against	02.10.2017
(5) Address to which notices may be sent to the Appellant	M/s Hiregange & Associates, "Basheer Villa", House No: 8-2-268/1/16/B, 2 nd Floor, Sriniketan Colony, Road No. 3, Banjara Hills, Hyderabad - 500 034. (And also copy to the Appellant)
(5A)(i) Period of dispute	January 2010 to December 2011
(ii) Amount of service tax, if any demanded for the period mentioned in the Col. (i)	Rs.48,00,391/- for the period Jan'10 to Dec'10 and Rs.46,81,850/- for the period Jan'11 to Dec'11
(iii) Amount of refund if any claimed for the period mentioned in Col. (i)	NA
(iv) Amount of Interest	Interest u/s 75 of Finance Act, 1994.
(v) Amount of penalty	Rs.200/-per day under Section 76 of the Finance Act, 1994.
(vi) Value of Taxable Service for the period mentioned in Col.(i)	Rs.11,65,14,000/- for the period Jan'10 to Dec'10 and Rs.11,36,37,141/- for the period Jan'11 to Dec'11
(6) Whether Service Tax or penalty or interest or all the three have been deposited.	An amount of Rs. 47,80,786/- has been already paid. The same can be adjusted towards mandatory pre-deposit in terms of section 35F of Central Excise Act, 1944 as required (Copy of challans enclosed as Annexures XII)
(6A) Whether the appellant wishes to be heard in person?	Yes, at the earliest
(7) Reliefs claimed in appeal	To set aside the impugned order to the extent aggrieved and grant the relief claimed.



Appellant
[Signature]

BRIEF FACTS OF THE CASE:

A. M/s. Greenwood Estates(hereinafter referred to as 'Appellant') is mainly engaged in the sale of residential houses to prospective buyers while the units are under construction. For the said purpose, the Appellant enters into two separate agreements with their customers one is for sale of undivided portion of land together with semi-finished flat (sale deed) and another one is construction agreement for undertaking construction. Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same.

B. The details of amounts received from customers is as follows

Jan 2010 to Dec 2010			
Description	Receipts	Non taxable	Taxable
Sum towards sale deed	Rs.4,07,44,617	Rs.4,07,44,617	Nil
sum towards agreement of Construction	Rs.5,32,39,887	Nil	Rs.5,32,39,887
Sum towards other taxable receipts	Rs.13,29,697	Nil	Rs.13,29,697
Sum towards VAT, Regn. charges, etc	Rs.1,11,48,364	Rs.1,11,48,364	Nil
Total	Rs.10,64,62,565	Rs.5,18,92,981	5,45,69,584

Jan 2011 to Dec 2011			
Description	Receipts	Non taxable	Taxable
Sum towards sale deed	Rs.4,28,44,626	Rs.4,28,44,626	Nil
Sum towards agreement of Construction	Rs.5,50,55,881	Nil	Rs.5,50,55,881
Sum towards other taxable receipts	Rs.11,40,800	Nil	Rs.11,40,800
Sum towards VAT, Regn. charges, etc	Rs.96,23,950	Rs.96,23,950	Nil
Total	Rs.10,86,65,257	Rs.5,24,68,576	Rs.5,61,96,681




C. The liability for the impugned period and the details of payments are summarized as follows

Particulars	Jan'10 to Dec'10	Jan'11 to Dec'11
Gross Receipts	Rs.10,64,62,565	Rs.10,86,65,257
Less: Deductions		
Sale Deed Value	Rs.4,07,44,617	Rs.4,28,44,626
VAT, Registration charges, stamp duty and other non taxable receipts	Rs.1,11,48,364	Rs.96,23,950
Taxable value	Rs.5,45,69,584	Rs.5,61,96,681
Abatement @ 60%	Rs.3,27,41,750	Rs.3,37,18,008
Net Taxable Value	Rs.2,18,27,833	Rs.2,24,78,672
Service Tax @ 10.3%	Rs.22,48,267	Rs.23,15,303
Actually Paid	Rs.24,69,553	Rs.23,11,233
Short/(Excess) Paid	(Rs.2,21,286)	Rs.4,070

D. An amount of Rs. 47,80,786/- has already paid towards service tax on the amounts received from customers against the liability of Rs. 45,63,570/- resulting in excess payment of Rs.2,17,216/-.

E. The levy of service tax on above arrangements has seen a fair share of litigation and amendments. In 2009, there was no clarity on whether service tax was payable or not. However, the Appellant chose to pay service tax under protest on the amount received towards the "construction agreement" on the basis of law as understood by them. Thereafter, based on Circular No. 108/2/2009 ST dated 29.01.2009,

the Appellant believed that service tax was not payable and therefore discontinued payment of service tax on the said "Construction agreements".

F. As Appellant has stopped making payment of Service Tax, the Anti Evasion department initiated the proceedings against the Appellant and various statements were recorded. In the above context, a Show Cause Notice (SCN) dated 21.05.2010 for the period from January 2009 to December 2009 ("First SCN") was issued against the Appellant.

G. Subsequently, periodical SCN's dated 23.04.2011 & dated 24.04.2012 ("Second SCN & Third SCN") was issued for the period from January 2010 to December 2010 and January 2011 to December 2010 (copies enclosed as annexure VII & VIII). The said SCN's were issued after alleging that:

"As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by assessee thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their



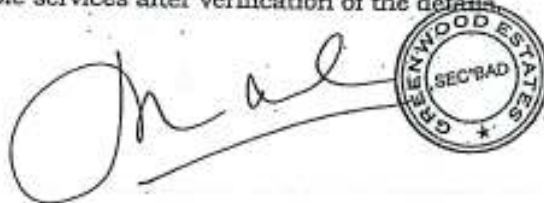
customers to whom the land was already sold vide sale deed
are taxable services under "works contract service"

H. The aforesaid Show Cause Notices were adjudicated vide a common Order-in-Original No.51/2012-Adjn (ST)(ADC) dated 31.08.2012 wherein vide Para 17 of the impugned Order stated as follows

"Various flats have been sold by them to various customers in two states. First, they have executed a sale deed at semi finished stage by which the ownership of the semi-finished flats was transferred to the customer. Appropriate stamp duty was paid on the sale deed value. No service tax been demanded on the sale deed value in light of Board Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

I. From the above Para, it is clear that the OIO dated 31.08.2012 accepted that service tax was not demanded on sale deed value however OIO dated 31.08.2012 erred while quantifying the demand as it has included the amounts received towards Sale deeds also.

J. Appellant has filed an Appeal before the Commissioner (Appeals) against the said order along with stay application. The Commissioner (Appeals) vide Order-in-Appeal No.39/2013 (H-II) S. Tax dated 27.02.2013 did not agree on the contentions of personal use but he did find merit in the Appellant plea of re-quantification and therefore remanded the matter back to the Original Authority to re-quantify the value of taxable services after verification of the details.



K. Against the above referred OIA, Appellant has filed an appeal before CESTAT and CESTAT vide Final Order No.20401/2014 in ST/Stay/27332/2013 in ST/27017/2013-DB dated 25.03.2014 stated as follows

"It was submitted by the both sided that the issue is not only re-quantification but also verification of certain facts and aspects of law which have already been confirmed by Commissioner (appeals). Instead of going into issue which will result in a decision on a part of appeal, we consider it appropriate that the litigation should be merged into one rather than having separate parallel litigation 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 to show cause notice and also under take re-quantification as directed by the 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 remind the matter without allowing appellant to present their case again on the aspects which have concluded by the Commissioner (appeals). Therefore, while reminding the matter after setting aside the impugned order, we direct the original adjudicating authority to consider all the issues a fresh and pass a well-reasoned order, as far as re-quantification is concerned whenever there is no dispute, The re-quantification can be done as directed by Commissioner(appeals). Whatever there are dispute the matter can be decided by adjudicating

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authority, by passing a well reasoned and detailed order. It is made clear that the amounts already deposited need not refunded just because the impugned order has been set aside till the issue is decided."

L. Subsequently, the adjudicating authority has granted personal hearing wherein the authorised representative requested 10 days time to give the documents for computations and written submissions.

M. The Appellant vide its letter dated 22.12.2015 has given working of receipts and the attribution of the said receipts towards sale deeds, construction agreements and other non-taxable receipts. The details were submitted along with copies of agreements, Financial statements and ledger copies.

N. The details submitted vide the letter dated 22.12.2015 (bifurcation of the total receipts into various heads like sale deed, construction agreement etc.) does not match with the figures submitted during the previous stages due to the following reasons

- Appellant used to maintain the records of receipts from each customer manually wherein bifurcation of the each receipt towards the sale deed, construction agreement or others heads was accounted manually in the books of accounts. The details submitted during the original proceedings were based on this manual records maintained. However after certain time Appellant started using the customised software which automates the recording of the receipts from the customers as well as



bifurcation towards different heads (sale deed, construction agreement etc.,) and the details of the amounts submitted vide letter dated 22.12.2015 are based on the updated records done by the above mentioned software.

➤ Other reason was that during the subject period, few customers paid the ad-hoc amounts wherein there is no consensus among the Appellant and customer regarding the specific flat as well as bifurcation of the amount towards various aforesaid heads (similar to investment). Later both came to consensus and executed the agreements. While the details submitted in original proceedings are based on the ad-hoc amounts (bifurcation of the receipts were also done ad hoc) whereas the details submitted vide letter dated 22.12.2015 are on actual basis. Therefore, there is a difference between the details submitted during the adjudication and details submitted vide the above referred letter.

O. After submission of the above details, there was no response from the Ld. Adjudicating authority. After expiry of nearly 2 years, Appellant received the present Order-in-Original No.83/2016-Adjn (ST)(ADC) dated 09.06.2017 confirming the demands proposed in the Show Cause Notices and rejecting the plea for re-quantification of the demand.

P. The impugned order was passed on the following grounds

a. Assessee 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 assessee had collected total value from the customers and entered into sale deed agreement and construction agreement simultaneously. I find that the board vide Circular No.108/102/2009-ST dt.29.01.2009 has clarified that "if the ultimate owner enter into contract for construction of a residential definition of residential complex. I find that the exclusion clause would apply to the complex as a whole and not to individual residential unit. 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.

- b. Assessee had obtained Service tax registration and paid Service tax under Work 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 amount from their customers during the said period, contravening the provision 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 proceeding.

c. 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 has 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 entered into a contract for construction of a residential etc. The assesseees have simply mentioned in their written reply dt. 22.12.2015 that an amount of Rs. 11148364/- pertains to VAT Registration charges, stamp duty, etc. and reiterated the same in the Annexure B to the letter in 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. As the completion certificate have not been issued by the competent authority, the amount received as consideration towards the taxable activity of semi-finished flats are taxable

d. Assessee 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 assessee during their submissions before various authorities have misrepresented the fact of quantum of receipts. One the amounts are received in previous period (in this case for the period Jan '10 to Dec'11) the factum of quantum of accounts 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 authorities. In view of the above and as the assessee 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 assessee vide their letter
dt.22.12.2015.

Aggrieved by the impugned order, which is contrary to facts, law and evidence,
apart from being contrary to catena of judicial decisions and beset with grave
and incurable legal infirmities, the Appellant prefers this appeal on the
following grounds (which are alternate pleas and without prejudice to one
another) amongst those to be urged at the time of hearing of the appeal.

Chil



Grounds of Appeal

1. 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. For the ease of comprehension, the submissions in this appeal are made under different heads covering different aspects involved in the subject SCN as listed below
 - a. Impugned Order is not valid
 - b. Construction Service provided by Builder prior to 01.07.2010 is not taxable
 - c. Construction of Residential complex for "Personal Use" is excluded from definition of Residential Complex
 - d. No Service tax on sale of semi-finished flat
 - e. Other non-taxable receipts (Corpus fund, Electricity deposit, water charges, service tax etc.,) are not liable - hence shall not be included in 'taxable value'
 - f. Re-quantification of demand
 - g. Interest and penalties should not be imposed

In Re: Impugned order is not valid

Impugned order beyond SCN

3. Appellant submits that the impugned order has confirmed the demand on amounts received towards sale deed value. In this regard, appellant submits that the impugned order went beyond SCN in as much as confirming the demand on sale deed value as the SCN itself has stated



that demand is not made on amount received towards sale deed value vide Para 3 of the SCN as follows

"As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by assessee thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "works contract service"

4. Appellant submits that from the above referred observation of the SCN it is clear that it has intended to demand service tax only on amounts received towards construction agreements entered with customer but not on the amounts received towards sale deed value. Therefore from the above referred paragraphs it can be seen that the impugned order has clearly travelled beyond the SCN and hence is not valid to that extent. Relied on Commissioner v. Shital International — 2010 (259) E.L.T. 165 (S.C.) wherein it was held that "it is trite law that unless the foundation of the case is laid in the show cause notice, the revenue cannot be permitted to build up a new case against the assessee."



5. Appellant further submits that even the original Order-in-Original No.51/2012-Adjn (ST)(ADC) dated 31.08.2012 wherein vide Para 17 of the impugned Order stated as follows

"Various flats have been sold by them to various customers in two states. First, they have executed a sale deed at semi finished stage by which the ownership of the semi-finished flats was transferred to the customer. Appropriate stamp duty was paid on the sale deed value. No service tax been demanded on the sale deed value in light of Board Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

6. From the above Para, it is clear that the Original Order-in-Original itself has accepted that no service tax shall be demanded on sale deed value but in the Denovo Order-in-Original, the adjudicating authority has taken a different view which is contrary to their own findings in the original adjudication order therefore the allegation of the impugned order is not correct and the same needs to be set aside.

7. Appellant further submits that the Hon'ble Tribunal while remanding the matter to lower authority stated as follows *"It was submitted by the 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 Commissioner (appeals). Instead of going into issue which will result in a decision on a part of appeal, we consider it appropriate that the*



litigation should be merged into one rather than having separate ³⁰²parallel litigation 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 to show cause notice and also under take re-quantification as directed by the 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 appellant to present their case again on the aspects which have concluded by the Commissioner (appeals). Therefore, while reminding the matter after setting aside the impugned order, we direct the original adjudicating authority to consider all the issues a fresh and pass a well -reasoned order, as far as re-quantification is concerned whenever there is no dispute, The re-quantification can be done as directed by Commissioner(appeals). Whatever there are dispute the matter can be decided by adjudicating authority, by passing a well reasoned and detailed order. It is made clear that the amounts already deposited need not refunded just because the impugned order has been set aside till the issue is decided."

8. In this regard, Appellant submits that the Hon'ble CESTAT has remanded the matter with specific direction to consider all the issues afresh and directed to pass a well reasoned order but on going through the impugned order it is very clear that the adjudicating authority has not considered any issues afresh but has passed the impugned order solely based on the information submitted during the first stage of



adjudication which shows that the authority has not followed the directions of the Tribunal in a reasonable manner. As the impugned order is passed in violation of Tribunal order the same is not valid and the same needs to be set aside.

9. Appellant further submits that the adjudicating authority not made any attempt to consider the issues afresh which shows the revenue biased approach of the department. The submissions regarding re-quantification was rejected solely based on the allegation that the details submitted at the various stages of the adjudication is not matching. In this regard, Appellant submits that while submitting the information during the adjudication proceedings Appellant has submitting the details without availing the deductions of consideration received towards certain amounts. As the tribunal has directed to consider the issues afresh, Appellant while submitting the letter dated 22.12.2015, has availed the said deduction therefore there is a difference between amounts submitted during the CESTAT stage and De-novo adjudication stage.
10. Appellant submits that as the tribunal has ordered to decide the issue afresh it is not proper for the adjudicating authority to compare the figures with first adjudication stage to confirm the demand. As the impugned order is passed ignoring the directions given by the tribunal therefore the impugned order is void and needs to be set aside.

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11. Appellant submits that if the adjudicating authority requires any information to decide the case they would have requested the Appellant for the said information but the authority has not made any attempt to obtain any information to consider the issue afresh. As the impugned order has been passed based on limited information the same is not tenable and needs to be set aside.

12. Appellant submits that the adjudicating authority has not at all made an attempt to understand the transaction undertaken by the Appellant and the scope of different agreements entered with the customer. Without verifying the scope of the agreements, the impugned order has simply confirmed the demand by extracting various definitions of Finance Act, 1994 and without giving any reasons why the amounts received by the Appellant is taxable. This shows that impugned order is not reasoned order and hence not valid and requires to be set aside. In this regard Appellant wish to rely on

a. *Sant Lal Gupta v. Modern Coop.G.H.Society Ltd.* — 2010 (262) E.L.T. 6 (S.C.) wherein it was held that *"The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is*



adversely affected must know why his application has been rejected."

- b. AC of CTDVs. Shukla and Brothers, 2011 (22) S.T.R. 105 (S.C.)
- c. State of Orissa v. DhaniramLuhar - (2004) 5 SCC 568

13. Appellant submits that as the impugned order has not been passed as per the directions of the Hon'ble CESTAT in as much as passing the unreasoned order the same is not valid and needs to be set aside. Appellant further submits that the impugned order has not quantified the service tax liability by alleging that Appellant has submitted different amounts before different authorities but has not discussed why the amounts received by the Appellant towards Sale Deed is taxable. This shows that the impugned order has been passed without examining all the activities undertaken by the Appellant therefore the same is not valid and needs to be set aside.

In Re: Construction Service provided by Builder prior to 01.07.2010 is not taxable

14. Appellant submits that CBEC vide Circular No 151/2/2012 dated 10/02/2012 had clarified the applicability of service tax in light of various business models and opined that the activity of builder/developer prior to 01/07/2010 is not taxable. The same is extracted here for ready reference.

(A) Taxability of the construction service:

- (i) For the period prior to 1-7-2010 : construction service provided by the builder/developer will not be taxable, in



terms of Board's Circular No. 108/2/2009-S.T., dated 29-1-2009 [2009 (13) S.T.R. C33]. The first paragraph of the above referred Circular is extracted here for ready reference.

"Many issues have been referred by the field formations, in the recent past, seeking clarification regarding the levy and collection of service tax on construction services [clauses (zzq),(zzzh) of section 65(105) of the Finance Act, 1994], in the light of varying business models. Across the country, divergent business models and practices are being followed in the construction sector. Some of these business models and practices could be region specific."

15. Appellant submits that the impugned order has not specified any reason why the construction service provided by the builder prior to 01.07.2010 is liable to service tax. As it was specifically given in the above referred circular about the non-taxability of builder prior to 01.07.2010, the contention of the impugned order runs contrary to the clarification of CBEC circular. And it is settled law that CBEC circular binds on revenue department **and it is not open to them to take a different view than the one taken by the Board in the circular.** In this regard wishes to rely on:

- a. Paper Products Ltd. v. Commissioner — 1999 (112) E.L.T. 765 (S.C.);
- b. State of Kerala v. Kurian Abraham Pvt. Ltd. — 2008 (224) E.L.T. 354 (S.C.);



16. Further in case of Krishna Homes v. Commissioner — 2014 (34) S.T.R. 881 (Tri-Del) analysed the issue as to the applicability of levy of service tax on construction of residential complex when the agreements were entered for construction of residential units and possession was handed over on completion of the construction after full payment was made by the customers. The relevant portion is extracted below:

"9. In view of the above, though in view of the Apex Court judgment in the case of *M/s. Larsen & Toubro Limited and Others v. State of Karnataka & Others* (supra), the agreements entered into by a builder/promoter/developer with prospective buyers for construction of residential units in a residential complex against payments being made by the prospective buyers in instalments during construction and in terms of which the possession of the residential unit, is to be handed over to the customers on completion of the residential complex and full payment having been made, are to be treated as works contracts, it has to be held that during the period of dispute, there was no intention of the Government to tax the activity in terms of such contracts a builder/developer with prospective customers for construction of residential units in a residential complex. Such works contracts involving transfer of immovable property were brought within the purview of taxable service by adding explanation to Section 65(105)(zzzh) w.e.f. 1-7-2010, and therefore, it has to be held that such contracts were not covered by Section 65(105)(zzzh) during the period prior to 1-7-2010."



17. Besides above, there are host of decisions holding that builder/developer are not liable for service tax prior to 01.07.2010 and only contractors/designers are made liable for service tax. Few of the decisions are cited below:

- a. Josh P John v. CST 2014-TIOL-1753-CESTAT-BANG;
- b. Jain Housing v. CST 2014 (36) S.T.R. 1010 (Mad.);
- c. Sri Aditya Homes Pvt Ltdv. CCE 2014-TIOL-2165-CESTAT-BANG;
- d. Vijay Shanthi Builders Ltd Vs CST2017-TIOL-3845-CESTAT-MAD;

18. It is submitted that in terms of Notification No.36/2010-ST dated 28.6.2010, if value towards any service has been received before 1.07.2010, service tax on such value is exempted. By virtue of agreement with customers the consideration for provision for residential complex service had been received prior to 1.7.2010 even though flats were handed over subsequently.

19. Appellant submits that 2010 amendment(insertion of the explanation) was to expand and tax the builders/developers and till that time it was understood that contractors/designers are alone liable for service tax. This was precisely and concisely the understanding and interpretation can be drawn from the law in vogue at that time and same position was specifically clarified by CBEC vide its circulars (cited supra) and also confirmed in the decisions (supra).




20. Appellant further submits that understanding and interpretation should be drawn from the wordings of statute what is clearly stated and not to speculate upon latent imponderables. Relied on Supreme Court decision in case of Raja Satyendra Narain Singh v. State of Bihar and Others, reported in 1987 B.L.J.R. 477 (Page 481);

In Re: Construction of Residential complex for "Personal Use" is excluded from definition of Residential Complex

21. Without prejudice to the foregoing, assuming but not admitting the same is covered under the tax net. The term "Construction of Complex" is defined under section 65 (30a) as under

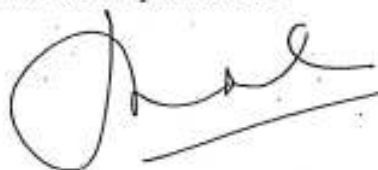
(30a) "construction of complex" means —

(a) construction of a new residential complex or a part thereof;

(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex

22. Without prejudice to the foregoing, Appellant submits that the construction service of the semi-finished flat is provided for the owner of the semi-finished flat/customer, who in turn used such flat for his personal use therefore the same is excluded from the definition of 'construction of complex service'.




- 231
23. The Appellant submits that it has been specifically clarified vide board Circular No. 108/2/2009-S.T., dated 29-1-2009 that the construction for personal use of the customer falls within the ambit of exclusion portion of the definition of the "residential complex" as defined u/s 65(91a) of the Finance Ac, 1994 and accordingly no service tax is payable on such transaction.

Relevant extract

"...Further, 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'..."

24. Appellant submits that the impugned order vide Para 4.5 stated that *"I find that the assessee had collected total value from the customers and entered into sale deed agreement and construction agreement simultaneously. I find that the board vide Circular No.108/102/2009-ST dt.29.01.2009 has clarified that "if the ultimate owner enter into contract for construction of a residential definition of residential complex. I find that the exclusion clause would apply to the complex as a whole and not to individual residential unit. In other words, if the*

123-
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."

25. In this regard Appellant wishes to highlight that neither in the definition nor in the clarification, there is any mention that the entire complex should be used by **one** person for his or her residence to be eligible for the exemption. The exemption would be available if the sole condition is satisfied i.e. personal use. Hence the allegation of the impugned order is incorrect and needs to be set aside.
26. Appellant submits the preamble of the referred Circular for understanding what issue exactly the board wanted to clarify. The relevant part of the said circular (para 1) is extracted hereunder for ready reference.
- "...Doubts have arisen regarding the applicability of service tax in a case where developer/builder/promoter enters into an agreement, with the ultimate owner for **selling a dwelling unit in a residential complex** at any stage of construction (or even prior to that) and who makes construction linked payment..." (Para 1)*
27. Appellant submits that from the above extract, it is clear that the subject matter of the referred circular is to clarify the taxability in **transaction of dwelling unit in a residential complex**. Therefore the clarification aims at clarifying exemption of residential unit and not the residential complex as alleged in the notice.




28. Appellant submits that it is important to consider what arguments are considered by board for providing this clarification. The relevant part as applicable in the context has been extracted as under for ready reference.

"...It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax..." (Para 2)

29. Appellant submits that the argument is in context of single residential unit bought by the individual customer and not the transaction of residential complex. The clarification has been provided based on the examination of the above argument among others. Hence the allegation of the impugned order is against to clarification given has to be set aside. It is settled law that officers of the department should not argue against their own Circulars. In this regard wishes to rely on Chandras Chemical Industries Pvt. Ltd Vs Collr. Of C. Ex., Calcutta 2000 (122) E.L.T 268 (Tribunal) it was held that *"We also take note of the fact that the Hon'ble Supreme Court has laid down in a number of decisions that the Excise Authorities cannot be heard to argue against the Circular issued by the Board and it is not open to them to take a different view than the one taken by the Board in the Circular"*



30. The Appellant submits the final clarification was provided by the board based on the preamble and the arguments. The relevant portion of the circular is provided here under for the ready reference.

"... The matter has been examined by the Board. Generally, the initial agreement between the promoters/builders/developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, 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'. However, in both these situations, if services of any person like contractor, designer or a similar service




provider are received, then such a person would be liable to ^{pay} service tax..." (Para 3)

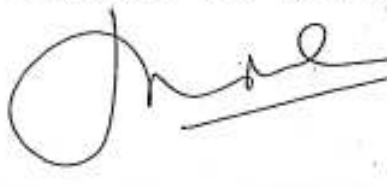
31. Appellant submits that the clarification provided above is that in the under mentioned two scenario service tax is not payable.
- a. For service provided until the sale deed has been executed to the ultimate owner.
 - b. For service provided by entering into construction agreement with such ultimate owner, who receives the constructed flat for his personal use.
32. Appellant submits that it is exactly the facts in their case. The first clarification pertains to consideration received for construction in the sale deed portion. The second clarification pertains to construction in the construction agreement portion. Therefore this clarification is applicable to them *ibid*.
33. Appellant submitted that department has very narrowly interpreted the provision without much application of mind and has concluded that if the entire complex is put to personal use by a single person, then it is excluded. The circular or the definition does not give any meaning as to personal use by a single person. In fact it is very clear that the very reason for issuance of the circular is to clarify the applicability of residential unit and not the residential complex.
34. Where an exemption is granted through Circular No. 108/2/2009-S.T., dated 29-1-2009, the same cannot be denied on unreasonable



grounds and illogical interpretation as above. In the definition ^{1,56}
"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.**" Since the reference is "constructed by a person" in the
definition, it cannot be interpreted as "complex which is constructed
by ONE person....." similar the reference "personal use as residence
by such person" also cannot be interpreted as "personal use by ONE
persons" Such interpretation would be totally against the principles of
interpretation of law and also highly illogical.

35. Appellant submits that with the above exclusion, no service tax is payable at all for the consideration pertaining to construction service provided for its customer and accordingly the impugned order is invalid.
36. Without prejudice to the foregoing, Appellant further submits that non-taxability of the construction provided for an individual customer intended for his personal was also clarified by TRU vide its letter dated F. No. B1/6/2005-TRU, dated 27-7-2005 during the introduction of the levy, therefore the service tax is not payable on such consideration from abinitio. Relevant Extract is reproduced below:

"13.4 However, residential complex having only 12 or less residential units would not be taxable. Similarly, residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing

services of a construction service provider, is also not covered under the scope of the service tax and not taxable"

37. Without prejudice to the foregoing, Appellant further submits that the board in between had clarified in an indicative manner that the personal use of a residential complex is not liable for service tax in the Circular F. No. 332/35/2006-TRU, dated 1-8-2006.

2. Again will service tax be applicable on the same, in case he constructs commercial complex for himself for putting it on rent or sale?	Commercial complex does not fall within the scope of "residential complex intended for personal use". Hence, service provided for construction of commercial complex is leviable to service tax.
Will the construction of an individual house or a bungalow meant for residence of an individual fall in purview of service tax, is so, whose responsibility is there for payment?	Clarified vide F. No. B1/6/ 2005-TRU, dated 27-7-2005, that residential complex constructed by an individual, intended for personal use as residence and constructed by directly availing services of a construction service provider, is not liable to service tax.

38. Without prejudice to the foregoing, assuming but not admitting that when the entire residential complex is meant for a person for his personal use, then such complex falls under excluded category is to



be considered as interpreted by the impugned order, then the entire section 65(91a) gets defeated as in case complex belonging to single person there would be nothing called as a common area, common water supply etc, the word "common" would be used only in case on multiple owner and not in case of single owner, therefore the interpretation of the department is meaningless.

39. Appellant further submits the various decision that has been rendered relying on the Circular 108 are as under

- a. M/s Classic Promoters and Developers, M/s Classic Properties v/s CCE Mangalore 2009-TIOL-1106-CESTAT-Bang.
- b. M/s Virgo Properties Pvt Limited Vs CST, Chennai (Dated: May 3 2010) 2010-TIOL-1142-CESTAT-MAD,
- c. Ardra Associates Vs. CCE, Calicut - [2009] 22 STT 450 (BANG. - CESTAT)
- d. Ocean Builders vs Commissioner of C. Ex., Mangalore 2010 (019) STR 0546 Tri.-Bang
- e. Mohtisham Complexes Pvt. Ltd. Vs Commr. of C. Ex., Mangalore 2009 (016) STR 0448 Tri.-Bang
- f. Shri Sai Constructions Vs Commissioner of Service Tax, Bangalore 2009 (016) STR 0445 Tri.-Bang

In Re: No Service tax on sale of semi-finished flat

40. Appellant submits that the Para 3 of SCN dated 24.04.2012 reads as follows.



"As seen from the records, the Appellant entered into 1) Sale deed for sale of undivided portion of land together with semi-finished portion of the flat and 2) agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the Appellant thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there is transfer of property in goods in the execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold are taxable service under Works Contract service."

41. Appellant submits that from the Plain reading of the above Para it is clear that the Subject SCN itself admitted the fact that **only services rendered by the Appellant after execution of sale deed against agreements of construction to each of their customers** is liable for service tax under works contract service *qua* accepted that service tax is not applicable for the sale of semi-finished flat. In spite of this admittance in Para 3, the subject SCN in annexure while quantifying the demand has considered the total gross receipts which also includes the amount received for sale of semi-finished flat. On the basis of the same, Appellant submits that the proposition of the subject show cause notice demanding service tax on sale of semi-finished flat is not sustainable and requires to be dropped.



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42. Appellant further submits that the adjudicating authority while confirming the demand vide Para 17 of the Order-in-Original No.51/2012-Adjn (ST) (ADC) dated 31.08.2012 stated as follows

"Various flats have been sold by them to various customers in two states. First, they have executed a sale deed at semi finished stage by which the ownership of the semi-finished flats was transferred to the customer. Appropriate stamp duty was paid on the sale deed value. No service tax been demanded on the sale deed value in light of Board Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

43. Appellant submits that from the above referred Para it is clear that the order dated 31.08.2012 has categorically accepted that service tax was not demanded on sale deed value but while quantifying the demand it has included the amounts received towards Sale deeds.

44. Appellant further submits that while confirming the demand during the first adjudication stage the above referred Order-in-Original has clearly stated that demand should be restricted only to construction agreement and the demand on sale deed value is not sustainable. But surprisingly during the denovo proceedings, impugned order has taken a completely different view and held that amounts received towards sale deeds value is also taxable. As the adjudicating authority itself has accepted the non-taxability of sale deed value the same



during the original proceedings and impugned order is not permitted to take different view in the denovo-proceedings. This shows that the impugned order has been issued on revenue bias and the U-turn taken by the adjudicating authority to confirm the demand is not tenable and the same needs to be set aside.

45. Appellant submits that the sale of semi-finished flat is *transfer of immovable property which is not leviable to service tax*. In the present case, the agreement of sale deed is entered for sale/register of semi-finished flat which is an immovable property. Accordingly, the amount received for sale of semi-finished flat is not liable to service tax. On the basis of same, Appellant submits that the proposition of subject show cause notice demanding service tax on the Appellant is not sustainable and requires to be dropped.
46. Appellant submits that the above referred SCN admitted the fact that there is a sale of semi-finished flat and construction activity has been done on the land of buyers. It substantiates the fact that the activity of sale of semi-finished flat is a transaction in immovable property which is not leviable to service tax under Finance Act, 1994. On the basis of the same, Appellant submits that the proposition of the subject show cause notice is not sustainable and requires to be dropped.
47. Appellant submits that sale deed is executed for semi-finished flat represents the construction work already done prior to booking of flat



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by the prospective buyer. The work undertaken till that time of booking flat is nothing but work done for self as there is no service provider and receiver. It is settled law that there is no levy of service tax on the self service and further to be a works contract, there should be a contract and any work done prior to entering of such contracts cannot be brought into the realm of works contract. In this regard, reliance is placed on the following:

- a. Apex court judgment in Larsen and Toubro Limited v. State of Karnataka — 2014 (34) S.T.R. 481 (S.C.) wherein it was held that "115. It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government."
- b. CHD Developers Ltd vs State of Haryana and others, 2015 -TIOL-1521-HC - P&H-VAT wherein it was held that "45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is




*to be directed on the value of the goods at the time of incorporation
and it should not purport to tax the transfer of immovable property."*

48. It is further submitted that to be covered under the definition of works contract, one of the vital conditions is that there should be transfer of property in goods leviable for sales tax/VAT. Undisputedly sale of undivided portion of land along with semi finished flat is not chargeable to VAT and it is mere sale of immovable property (same was supported by above cited judgments also). Therefore said sale cannot be considered as works contract and consequently no service tax is liable to be paid. All the goods till the prospective customer become owner have been self consumed and not transferred to anybody. Further goods, being used in the construction of semi-finished flat, have lost its identity and been converted into immovable property which cannot be considered as goods therefore the liability to pay service under 'works contract service' on the portion of semi-constructed villa represented by 'sale deed' would not arise.
49. Appellant further submits that there is no service tax levy on sale of semi-finished flat as the same was excluded from the definition of 'service' u/s. section 65B(44) of Finance Act, 1994 ("Transfer of title in goods or immovable property, by way of sale").

In Re: Other non-taxable receipts (Corpus fund, Electricity deposit, water charges, service tax etc.,) are not liable - hence shall not be included in 'taxable value'

50. Appellant submits that the impugned order has confirmed the demand on VAT, Registration charges, Stamp duty, Corpus Fund etc by alleging that Appellant has not provided any proof or evidence that



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said amount pertains to VAT, registration charges, electricity charges.

Appellant submits that these receipts consists of

- a. Corpus fund which is collected & totally kept in separate bank account and transferred to society/association once it is formed; collection of corpus fund & keeping in separate bank account and subsequent transfer to association/society is statutory requirement;
- b. Electricity deposit collected & totally remitted/deposited with the 'electricity board' before applying electricity connection to the villa and Appellant does not retain any amount out of it; this deposit is collected & remitted as per the statutory provisions of AP Electricity Reform Act 1998 r/w rules/regulations made there under;
- c. Water deposit collected & totally remitted to 'Hyderabad Metropolitan Water Supply & Sewerage Board (HMWSSB)' before taking the water connection. This Deposit amount also includes water consumption charges for first two months along with sewerage cess. All these deposits are collected & paid in terms of HMWSSB Act, 1989 r/w rules/regulations made thereunder;
- d. Service tax collected & remitted to the Central government as per the provisions of Finance Act, 1994;

As seen from the above, all these charges collected 'other non-taxable receipts' are statutory charges/deposit and received as mere reimbursements of expenses/charges incurred/paid on behalf of customers and does not involve any provision of service. Hence same



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shall be excluded from the taxable value *inter alia* in terms of Rule 5(2) of Service tax (determination of value) Rules, 2006.

51. Judicially also it was held that above charges are not to be included in taxable value. Relied on ICC Reality & Others Vs CCE2013 (32) S.T.R. 427 (Tri. - Mumbai); Karnataka Trade Promotion Organisation v. CST 2016-TIOL-1783-CESTAT-BANG; hence demand does not sustain to this extent.

52. Appellant submits that the impugned order vide Para 4.7 stated that *"The assessee has simply mentioned in their written reply dt. 22.12.2015 that an amount of Rs. 11148364/- pertains to VAT Registration charges, stamp duty, etc. and reiterated the same in the Annexure B to the letter in tabular form without support of any evidence. Hence, I am inclined not to extend the said benefit to the assessee."*

53. In this regard, Appellant submits that documents evidencing that above referred amounts are towards VAT, registration charges, Stamp Duty, electricity charges, corpus fund is already submitted during the *denovo* proceedings in 2015 itself therefore the allegation of the impugned order is not correct and the same needs to be set aside.

In Re: Re-quantification of demand

54. Without prejudice to above, in case any tax demand stands confirmed for the subject period, it is submitted that the amounts received towards construction agreement only should be taxed and not the



total amount received. The same was in line with the SCN OR No.52/2012-Adjn (ADC) dated 24.04.2012 vide Para 3 for the period January 2010 to December 2010 and SCN OR No.61/2011-Adjn(ST) dated 23.04.2011 vide Para 6 for the period January 2011 to December 2011 which was further confirmed by the common Order-in-Original No.51/2012-Adjn(ST)(ADC) dated 31.08.2012 vide Para 17. The details of the same are as follows

Jan 2010 to Dec 2010			
Description	Receipts	Non taxable	Taxable
Sum towards sale deed	Rs.4,07,44,617	Rs.4,07,44,617	Nil
sum towards agreement of Construction	Rs.5,32,39,887	Nil	Rs.5,32,39,887
Sum towards other taxable receipts	Rs.13,29,697	Nil	Rs.13,29,697
Sum towards VAT, Regn. charges, etc	Rs.1,11,48,364	Rs.1,11,48,364	Nil
Total	Rs.10,64,62,565	Rs.5,18,92,981	5,45,69,584

Jan 2011 to Dec 2011			
Description	Receipts	Non taxable	Taxable
Sum towards sale deed	Rs.4,28,44,626	Rs.4,28,44,626	Nil
Sum towards agreement of Construction	Rs.5,50,55,881	Nil	Rs.5,50,55,881
Sum towards other taxable receipts	Rs.11,40,800	Nil	Rs.11,40,800
Sum towards VAT, Regn. charges, etc	Rs.96,23,950	Rs.96,23,950	Nil
Total	Rs.10,86,65,257	Rs.5,24,68,576	Rs.5,61,96,681

55. The details of service tax liability and payments made by Appellant are as follows

Particulars	Jan'10 to Dec'10	Jan'11 to Dec'11
Gross Receipts	Rs.10,64,62,565	Rs.10,86,65,257
Less: Deductions		
Sale Deed Value	Rs.4,07,44,617	Rs.4,28,44,626
VAT, Registration charges, stamp duty and	Rs.1,11,48,364	



other non taxable receipts		Rs.96,23,950
Taxable value	Rs.5,45,69,584	Rs.5,61,96,681
Abatement @ 60%	Rs.3,27,41,750	Rs.3,37,18,008
Net Taxable Value	Rs.2,18,27,833	Rs.2,24,78,672
Service Tax @ 10.3%	Rs.22,48,267	Rs.23,15,303
Actually Paid	Rs.24,69,553	Rs.23,11,233
Short/(Excess) Paid	(Rs.2,21,286)	Rs.4,070

56. Appellant submits that as brought in background facts, an amount of Rs. 47,80,786/- has already paid towards service tax on the amounts received from customers against the liability of Rs. 45,63,570/- resulting in excess payment of Rs.2,17,216/- therefore no further payment is required towards service tax. Appellant humbly request Hon'ble Commissioner (Appeals) to consider the same while passing the order.
57. Appellant submits that above referred details are submitted by the Appellant to the adjudicating authority vide letter dated 22.12.2015 along with documentary evidence supporting their claim in CD form and requested to re-quantify the demand but the same was not considered while confirming the demand. As the impugned order is passed without considering the information submitted by the appellant the same is not valid and the same needs to be set aside.
58. Rebutting to the above submission the impugned order vide Para 4.8 stated that *"the assessee during their submissions before various authorities have misrepresented the fact of quantum of receipts. One the amounts are received in previous period (in this case for the period Jan*

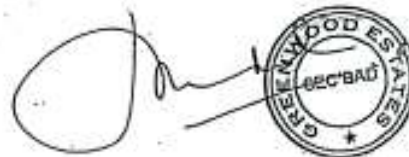


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'10 to Dec'11) the factum of quantum of accounts received cannot change. The fact of the quantum of amounts said to have been received during the two periods Jan'10 to Dec'10 and Jan'11 to Dec'11 cannot obviously change during the Show Cause Notices 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 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."

59. In this regard, Appellant submits that as explained in the background facts it is clear that the difference between the amounts submitted at the stage of adjudication and with the letter dated 22.12.2015 is due to following reasons

➤- Appellant used to maintain the records of receipts from each customer manually wherein bifurcation of the each receipt towards the sale deed, construction agreement or others heads was accounted manually in the books of accounts. The details submitted during the original proceedings were based on this



manual records maintained. However after certain time Appellant started using the customised software which automates the recording of the receipts from the customers as well as bifurcation towards different heads (sale deed, construction agreement etc.,) and the details of the amounts submitted vide letter dated 22.12.2015 are based on the updated records done by the above mentioned software.

- Other reason was that during the subject period, few customers paid the ad-hoc amounts wherein there is no consensus among the Appellant and customer regarding the specific flat as well as bifurcation of the amount towards various aforesaid heads (similar to investment). Later both came to consensus and executed the agreements. While the details submitted in original proceedings are based on the adhoc amounts (bifurcation of the receipts were also done adhoc) whereas the details submitted vide letter dated 22.12.2015 are on actual basis. Therefore, there is a difference between the details submitted during the adjudication and details submitted vide the above referred letter.

60. Further, Ld. Adjudicating authority should have sought clarification from the Appellant on the differences and in case, Appellant has not responded or not given any satisfactory explanation. Without that passing the impugned order after almost 2 years from the hearing date with surmise allegation that there is difference in the figures submitted is not valid in the law and requires to be set aside.

61. Appellant further in case Ld. Adjudicating authority department has doubt over the authentication of information submitted with the above referred letter they should have atleast considered the amounts which will be beneficial to the revenue but the impugned order has not done the same instead out-rightly rejecting the amounts submitted Appellant is not correct therefore the allegation of the impugned order is not correct and the same needs to be set aside.

Cum-tax benefit under Section 67 should be extended

62. Appellant submits that assuming but not admitting there is a liability under works contract service for sale of semi-finished flat, then as the Appellant has not collected service tax from the buyer, the benefit of cum-tax requires to be extended to the appellant.
63. Appellant submits that in light of the statutory backup as mentioned above and cases where it was held that when no service tax is collected from the customers the assessee shall be given the benefit of paying service tax on cum-tax basis
- a. P. Jani & Co. vs. CST 2010 (020) STR 0701 (Tri.-Ahmd).
 - b. Municipal Corporation of Delhi vs CST, Delhi 2009 (016) STR 0654 Tri.-Del
 - c. Omega Financial Services Vs CCE, Cochin 2011 (24) S.T.R 590
 - d. BSNL Vs CCE, Jaipure 2011 (24) S.T.R 435 (Tri-Del).

On the basis of above decisions, Appellant submits that the benefit of cum-tax requires to be provided to the Appellant. On the basis of the same, Appellant submits that the proposition of the subject show



cause notice demanding service tax on the Appellant is not sustainable and requires to be dropped.

In Re: Interest and penalties should not be imposed

64. Without prejudice to the foregoing, Appellant submits that when service tax itself is not payable, the question of interest 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)

65. Appellant submits that imposition of penalty cannot be merely an automatic consequence of failure to pay duty hence the impugned order imposing the penalty requires to be set aside.

66. Appellant submits that they are under bonafide belief that the amounts received towards sale deeds are not subjected to service tax. It settled position of the law that if the Appellant is under bonafide belief as regards to non taxability imposition of the penalties are not warranted. In this regards wishes to rely on the following judicial pronouncements.

a. Padmini Products v. Collector —1989 (43) E.L.T. 195 (S.C.)

b. Commissioner v. Surat Textiles Mills Ltd. — 2004 (167) E.L.T. 379 (S.C.)



Benefit of Section 80 should be extended

67. Appellant submits that alleged short/non-payment of service tax was due to various reasons *inter alia*

- a. Given understanding that compliance made by Appellant is in accordance with the law.
- b. Whatever believed as taxable was duly paid voluntarily.
- c. There were divergent views of Courts over the classification of indivisible contracts; taxability of transaction involving immovable property etc.,
- d. There was enough confusion prevalent on the applicability of the Service tax among the industry.
- e. Matters were referred to larger bench at various instances.

All the above can be considered as reasonable cause and waiver of penalty can be granted in terms of section 80 of Finance Act, 1994.

Relied on **CST, Vs Motor World 2012 (27) S.T.R 225 (Kar)**

68. Appellant craves leave to alter, add to and/or amend the aforesaid submissions.

69. Appellant submits that wish to be heard in personal before passing any order in this regard.

For M/s. Greenwood Estates

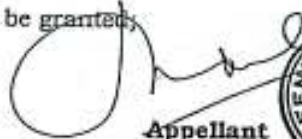
Authorized Signatory



PRAYER

Therefore it is prayed that

- a. To set aside the impugned order to the extent aggrieved;
- b. To hold that service tax is not applicable on builders prior to 01.07.2010;
- c. To hold that service tax is not applicable on amount received towards Sale Deed;
- d. To hold that service tax is not applicable on Other receipts
- e. To hold that demand should be re-quantified;
- f. To hold that cum-tax benefit under Section 67 should be extended;
- g. To hold that no interest and penalties are leviable;
- h. To hold that benefit of section 80 shall be extended;
- i. To hold that service tax already paid should be appropriated;
- j. Any other consequential relief shall be granted;


Appellant 

VERIFICATION

I, Soham Modi, Partner of M/s. Greenwood Estates, Hyderabad, the Appellant herein do declare that what is stated above is true to the best of our information and belief.

Verified today 14th day of December, 2017

Place: Hyderabad


Appellant





Annexure - XI

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. 09.06.2017

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 वह प्रति बिना शुल्क के दी जाती है
This copy is granted free of charge for the private use of the person to whom it is issued.

2. नोभीयवित्तियनियम, 1994 केअंतर्गत धारा 85(3A)केद्वाराप्राप्त। इसप्रकार प्राप्तआदेशनिर्णयकेअनुसारआदेशकी प्राप्तिकेदोमहीनोंकेभीतरआयुक्त(अपील), मुख्यलयकार्यालय, 7 वॉल, एल.बी. स्टेडियमरोड, बशीरबाग, हैदराबाद 500 004 कोअपीलअपीलप्रस्तुतकरसकते हैं।

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, 7th floor, L.B.Stadium Road, Basheerbagh, Hyderabad - 500 004.

3. धारा 85 केअंतर्गत आयुक्त(अपील) कोकीमानेवालीअपीलफार्म, एल.टी-4 मेंलेखित इसकीअपीलनिर्णय रितपद्धतिकेअनुसारकीजायचाहिए।

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. एल.टी-4 फार्म मेंलेखित अपीलअनुतिनिर्णयप्रस्तुतकीजायचाहिएऔर उसकेसाथनिर्णयआदेशकेनिरूपितअपीलकीजाएगीहो
उसकीएकप्रतिभीसंगानवीजायचाहिए।

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.अपीलपरऔरनिर्णयआदेशकेनिरूपितअपीलकीजाएगीहो उसआदेशकीप्रतिअपीलप्रस्तुतकीजायचाहिए। केन्द्रीय उत्पाद शुल्कअधिनियम 1944 कीसंतोषिताया 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)(zzzza) 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 assessees 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 assessees 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 assessees have 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 assessees have not submitted any proofs or evidence that they 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/-

Total = Rs.10,64,62,565/-

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	Total amount received
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)	<u>Amt. received</u> towards the sale deed	36612000	43525000	80238000
	<u>Amt. received</u> towards taxes and other charges	12993000	10070537	23063537
	<u>Amt. received</u> towards Construction Agreement charges	57306000	59940594	117246594
	Total	106911000	113637231	220548231

- (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	Total amount received
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
	Total	106912235	113637141	220549376

(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	Total amount received
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
	Total	106912235	76622179	183534414

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.

Annexure - XII

(1)

[Handwritten signature]
24/12/11



OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE
TAX HYDERABAD -II COMMISSIONERATE, L.B. STADIUM ROAD,
BASHEERBAGH, HYDERABAD - 500 004

O.R.No. 61/2011-Adjn (S.T.) G&X

Dated: 23.4.2011

SHOW CAUSE NOTICE

Subject: Service Tax - Offence - Case against M/s. Greenwood Estates - Non-payment of Service Tax on taxable services rendered - Show Cause Notice - Regarding.

M/s. Greenwood Estates, 5-4-187/3 & 4, IInd Floor, MG Road, Secunderabad - 500 003 (hereinafter referred as Greenwood / assessee, in short) are engaged in providing works contract service. M/s Greenwood Estates is a registered partnership firm and got themselves registered with the department for payment of service tax with STC No. AAHFG07118ST001.

2. A Show Cause Notice vide HQPOR No. 77/2010-Adjn(ST) dt. 21.5.2010 was issued for the period from January 2009 to December 2009 involving an amount of Rs. 947737/- including cess and the same has been adjudicated and confirmed vide Order-In-Original No:47/2010-ST dt. 24.11.2010. The present notice is issued in sequel to the same for the period from January 2010 to December 2010.

3. As per Section 65 (105) (zzzza) of the Finance Act, 1994 defines that '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
 - (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
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects."

3. As per 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 the 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.

4. M/s Greenwood Estates registered with the service tax department and not discharging the service tax liability properly and also not filing the ST-3 returns, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that M/s Greenwood Estates have undertaken a single venture by name M/s Greenwood Estates located at Kowkur Village, Malkajgiri Mandal, RR District and received amount from customers from towards sale of land and agreement of construction for the said period. Further, it is found that they have not filed ST-3 returns for the said period.

5. Further it is made clear on 01.02.2010 by Sri A.Shanker Reddy, Deputy General Manager(Admin) authorized representative of the assessee, that the activities undertaken by the company are providing services of construction of residential complexes and also stated that initially, they collect the amounts against booking form/agreement of sale. At the time of registration of the property, the amounts received till then will be allocated towards Sale Deed and Agreement of Construction. Therefore, service tax on amount received against Agreement of Construction portion of the amounts towards agreement of construction is aid on receipt basis. The Agreement of Sale constitutes the total amount of the land/semi finished flat with undivided share of land and value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of constructed unit as per the agreement of sale but possession was given in two phases one is land/semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks".

6. As per the exclusion provided in Section 65(91a) of the Service Tax Act, the residential complex 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. Here "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. It is further clarified in para 3 of the Circular No.108/02/2009-ST dt. 29.01.2009 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, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer construction entire complex for one person for personal use as residence by such person would not be subjected to service tax. Further, the builder/promoter/developer normally enters into construction/completion agreement after execution of sale deed, till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore, there is no levy of service tax on the services rendered till sale deed. i.e. on the value consideration shown in the sale deed. But, no stamp duty

will be paid on the agreements/contract against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105)(zzzza) of the Finance Act 1994.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s Greenwood Estates qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA & the Alwal Municipality vide Letter No. 3822/P4/P/H/07 dt. 9.7.2007. As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their customers under agreement of construction are taxable under Service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under works contract service.

8. M/s Greenwood vide their statement received in this office on 22.4.2011 has submitted the Flat-wise amounts received for the period from January 2010 to December 2010. The total amount received is Rs. 116514336/- against agreements of construction during the period and are liable to pay service tax including cess works out to Rs. 48,00,391/- and the interest at appropriate rates under Works Contract Service respectively.

9. M/s Greenwood are well aware of the provisions and of liability of service tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly with an intention to evade payment of Service Tax. They have intentionally not filed the ST-3 returns for the said period. Hence, the service tax payable by M/s Greenwood appears to be recovered under Sub-Section (1) of Section 73 of the Finance Act 1994.

10. From the foregoing, it appears that M/s Greenwood Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3 have contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of service tax on the value of the taxable services and Section 70 of the Finance Act 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they have not filed statutory returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details/information, with an intent to evade payment of service tax and are liable for recovery under provisions to the Section 73(1) of the Finance Act 1994 and thereby they have rendered themselves liable for penal action under Section 77 & 76 of the Finance Act 1994.

11. Therefore, M/s Greenwood Estates, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad, within 30 days of receipt of this Notice as to why:-

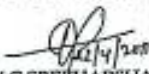
- (i) an amount of Rs. 48,00,391 /- (Rupees Forty eight lakhs three hundred ninety one only) including cess should not be demanded on the works contract service under the Sub-Section (1) of Section 73 of the Finance Act 1994 for the period from January 2010 to December 2010; and
- (ii) Interest is not payable by them on the amount demanded at (i) above under Section 75 of the Finance Act 1994; and
- (iii) Penalty should not be imposed on them under Section 77 of the Finance Act 1994 for the contravention of Rules and provisions of the Finance Act 1994; and
- (iv) Penalty should not be imposed on them under Section 76 of the Finance Act 1994.

12. M/s Greenwood Estates, Hyderabad at the time of showing cause, as above, are required to produce all the evidence upon which they intend to rely in their defence. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken within the stipulated time or having desired a hearing if they do not appear for the personal hearing on the appointed day & time, the case will be decided on merits, basing on the material/evidence available on record.

13. This notice is issued without prejudice to any other action that may be taken against the noticees / others under the Finance Act, 1994 or under any other law for the time being in force in India.

14. Reliance for issue of this notice is placed on the following:

- (i) Statement submitted by M/s Greenwood Estates and received on 22.4.2011.


(G.SREEHARSHA)
ADDITIONAL COMMISSIONER

Place: Hyderabad

Date: 04.2011

To:

✓ M/s Greenwood Estates,
5-4-187/3 & 4, IInd Floor, MG Road, Secunderabad - 500 003

Copy submitted to the Superintendent (Adjudication), Hyd-II Commr'sate, Hyd
Copy to the Superintendent, Group - X, Hyd-II Commr'sate, Hyd.
Spare copy.

2



सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX
हैदराबाद II आयुक्तालय HYDERABAD II COMMISSIONERATE
11-5-423/1/A:: सीताराम प्रसाद टावर:: रेड हिल्स:: हैदराबाद - 4
SITARAM PRASAD TOWERS:: RED HILLS:: HYDERABAD- 4

OR No: 52/2012 - Adjn (Addl. Commr.)
C.No: IV/16/ 197 /2011-S.Tax.Gr.X

Dt. 24.04.2012

SHOW CAUSE NOTICE

Subj: Service Tax - Non payment of Service tax on taxable services rendered by M/s Greenwood Estates - Issue of Show Cause Notice - Regarding.

M/s. Greenwood Estates, #5-4-187/3&4, II Floor, Soham Mansion, MG Road, Secunderabad-500 003 (here-in-after referred as "Greenwood" or the assessee(s)). The said assessee is registered partnership firm and got themselves registered with the department for payment of Service Tax vide Service Tax Registration Number AANFA5250FST001.

2. A Show Cause Notice vide HQPOR No. 77/2010-Adjn(ST) dt. 21.5.2010 was issued for the period from January 2009 to December 2009 involving an amount of Rs. 947737/- including cess and the same has been adjudicated and confirmed vide Order-In-Original No:47/2010-ST dt. 24.11.2010. Further, show cause notice has been issued for the period January 2010 to December 2010 for an amount of Rs. 4800391/- vide OR No. 61/2011 dt. 23.4.2011. The present notice is issued in sequel to the same for the period from January 2011 to December 2011.

3. As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee

thereafter to their customers under agreement of construction are taxable under Service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "Works Contract Service"

4. As per Section 65 (105) (zzzza) of the Finance Act, 1994 defines that "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
 - (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
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects."

4.1 An optional Composition Scheme for payment of Service Tax in relation to Works Contract Service is provided by the Notification No.32/2007-ST dated 22-5-2007, effective from 01-6-2007, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Under the said scheme, an assessor has to pay an amount

OR No. 52/2012 -Adja (ST)/(ADC)
C.No. IV/16/197/2011-Gr-X

and Section 70 of the Finance Act 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they have not filed statutory

returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details/information. Hence, the payment of service tax is liable for recovery under provisions of the Section 73(1) of the Finance Act 1994 and they are liable for penal action under Section 76 of the Finance Act, 1994 and 77 of the Finance Act 1994. Further, the assessee is liable for interest under Section 75 of the Finance Act, 1994.

9. Therefore, M/s Greenwood Estates, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad, within 30 (thirty) days of receipt of this Notice as to why:-

- (i) an amount of Rs. 46,81,850/- (Rupees Forty six lakhs eighty one thousand eight hundred fifty only) including cess should not be demanded on the "works contract" service under the Sub-Section (1) of Section 73 of the Finance Act 1994 for the period from January 2011 to December 2011. An amount of Rs.5,98,671/- vide challan dt. 27.11.2011 paid by them should not be adjusted against the demand discussed supra; and
- (ii) Interest is not payable by them on the amount demanded at (i) above under Section 75 of the Finance Act 1994; and
- (iii) Penalty should not be imposed on them under Section 77 of the Finance Act 1994 for the contravention of Rules and provisions of the Finance Act 1994 ; and
- (iv) Penalty should not be imposed on them under Section 76 of the Finance Act 1994 .

10. M/s Greenwood Estates, Hyderabad at the time of showing cause, as above, are required to produce all the evidence upon which they intend to rely in their defence. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken within the stipulated time or having desired a hearing if they do not appear for the personal hearing on the appointed day & time, the case will be decided on merits, basing on the material/evidence available on record.

UR No. 52/2012-Adin (ST)(ADC)
C.No. IV/16/197/2011-Gr-X

equivalent to two percent of the gross amount charged for the Works Contract, excluding the Value Added Tax (VAT) or Sales Tax paid on transfer of property of goods involved in the execution of Works Contract. W.e.f. 1-3-2008 onwards, the said rate of 2 % is changed to 4% vide Notification No.7/2008-S.T. dated 1-3-2008.

5. M/s Greenwood vide their statement received in this office on 07.02.2012 has submitted the Flat-wise amounts received for the period from January 2011 to December 2011. The total consideration received by them is Rs. 11,36,37,141/- during the period and are liable to pay service tax including cess on the same works out to Rs. 46,81,850/- and the interest at appropriate rates under "Works Contract Service" respectively. Further, the assessee has submitted service tax paid challan copy for an amount of Rs.5,98,671/- vide challan dt. 27.11.2011.

6. M/s Greenwood Estates registered with the service tax department and not discharging the service tax liability properly and also not filing the ST-3 returns, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that M/s Greenwood Estates have undertaken a single venture by name M/s Greenwood Estates located at Kowkur Village, Malkajgiri Mandal, RR District and received amount from customers from towards sale of land and agreement of construction for the said period.

7. M/s Greenwood are well aware of the provisions and of liability of service tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly. They have not filed the ST-3 returns for the half-year ending March 2011. Hence, the service tax payable by M/s Greenwood appears to be recovered under Sub-Section (1) of Section 73 of the Finance Act 1994.

8. From the foregoing, it appears that M/s Greenwood Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3 have contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of service tax on the value of the taxable services

OR No. 52/2012 -Adin (ST)(ADC)
C.No. IV/16/197/2011-Gr-X

11. This notice is issued without prejudice to any other action that may be taken against the noticees / others under the Finance Act, 1994 or under any other law for the time being in force in India.

12. Reliance for issue of this notice is placed on the following:

- (i) Statement submitted by M/s Greenwood Estates and received in this office on 08.02.2012.


[G.SREEHARSHA]
ADDITIONAL COMMISSIONER

Place: Hyderabad
Date: .04.2012

To:
M/s Greenwood Estates,
5-4-187/3 & 4, IInd Floor, MG Road, Secunderabad - 500 003

Copy submitted to the Superintendent (Adjudication),Hyd-II
Commra'ate, Hyd
Copy to the Superintendent , Group - X, Hyd-II Commr'ate, Hyd.
Spare copy.

Ameruse - XIV

FORM ST - 5

[Sec 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, CENTRAL EXCISE & SERVICE TAX APPELLATE
TRIBUNAL: HYDERABAD**

APPEAL No. ST/.....of 2018

Between:

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



Appellant

Vs.

**The Commissioner of Central Tax,
Secunderabad GST Commissionerate,
GST Bhavan, L.B.Stadium Road,
Basheerbagh, Hyderabad- 500 004**

Respondent

01(a)	Assessee Code	AAHG0711BST001
(b)	Premises Code	
(c)	PAN or UID	AAHG0711B
(e)	E-mail Address	
(f)	Phone Number	
(g)	Fax Number	
02.	The Designation and Address of the Authority passing the Order Appealed against.	The Commissioner (Appeals-II), 7 th Floor, GST Bhavan, L.B.Stadium Road, Basheer Bagh, Hyderabad - 500004
03.	Number and Date of the Order appealed against	O-I-A No: HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018
04.	Date of Communication of a copy of the Order appealed against	24.05.2018
05.	State of Union Territory and the Commissionerate in which the order or decision of assessment, penalty, was made	Telangana, Secunderabad GST Commissionerate, Hyderabad-500 04
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	No
07.	Designation and address of the Additional Commissioner of	



	adjudicating authority in case where the order appealed against is an order of the Commissioner (Appeals)	Service Tax, Service Tax Commissionerate, 11-5-423/1/A, Sitaram Prasad Tower, Red Hills, Hyderabad-500 004.
08.	Address to which notices may be sent to the appellant	M/s Hiregange & Associates, *4th Floor, West Block, Anushka Pride, Opp.Ratnadheep Supermarket, Road Number 12, Banjara Hills, Hyderabad, Telangana 500034 (Also to Appellant as stated in cause title supra)
09.	Address to which notices may be sent to the Respondent	The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, 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 Services Not in Negative list
12.	Period of Dispute	January 2010 to December 2011
13(i)	Amount of service tax, if any Demanded for the period of dispute	Rs.94,82,241/- (To be re-quantified in remand proceedings)
(ii)	Amount of interest involved up to the date of the order appealed against	Interest u/s 75 of the Finance Act 1994
(iii)	Amount of refund if any, rejected or disallowed for the period of dispute	Not Applicable
(iv)	Amount of penalty imposed	Penalty under Section 76 of Finance Act, 1994
14(i)	Amount of service tax or penalty or Interest deposited. If so, mention the amount deposited under each head in the box.	Rs.47,80,786/- vide was already paid and the same can be adjusted towards mandatory pre-deposit under section 35F of Central Excise Act, 1944 to the extent required
(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 central excise duty demand, and related fine or penalty, so far as the appellant is concerned?	No

	involve any customs duty demand, and related penalty, so far as the appellant is concerned?	
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., iv) Export of Services v) Import of Services vi) Point of Taxation vii) CENVAT viii) Refund ix) Valuation x) Others	Priority ii) - Classification of Services Priority x) - Others
18.	Central Excise Assessee Code, if registered with Central Excise	Not Applicable
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), the Number of Order-in-original covered by the said Order-in-Appeal.	Order in Original No.83/2016 - Adjn (ST) (ADC) dated 09.06.2017
21.	Whether the Appellant 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



Signature of the Appellant

STATEMENTS OF FACTS

A. M/s. Greenwood Estates(hereinafter referred to as'Appellant')is mainly engaged in the sale of residential houses to prospective buyers while the units are under construction. For the said purpose,the Appellant enters into two separate agreements with their customers one is for sale of undivided portion of land together with semi-finished flat (sale deed) and another one is construction agreement for undertaking construction. Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same.

B. The details of amounts received from customers is as follows:

Jan 2010 to Dec 2010			
Description	Receipts	Non-taxable	Taxable
Sum towards sale deed	Rs.4,07,44,617	Rs.4,07,44,617	Nil
sum towards agreement of Construction	Rs.5,32,39,887	Nil	Rs.5,32,39,887
Sum towards other taxable receipts	Rs.13,29,697	Nil	Rs.13,29,697
Sum towards VAT,Regn.charges, etc	Rs.1,11,48,364	Rs.1,11,48,364	Nil
Total	Rs.10,64,62,565	Rs.5,18,92,981	5,45,69,584
Jan 2011 to Dec 2011			
Description	Receipts	Non taxable	Taxable
Sum towards sale deed	Rs.4,28,44,626	Rs.4,28,44,626	Nil
Sum towards agreement of Construction	Rs.5,50,55,881	Nil	Rs.5,50,55,881
Sum towards other taxable receipts	Rs.11,40,800	Nil	Rs.11,40,800
Sum towards VAT,Regn.charges, etc	Rs.96,23,950	Rs.96,23,950	Nil
Total	Rs.10,86,65,257	Rs.5,24,68,576	Rs.5,61,96,681

C. The liability for the impugned period and the details of payments are summarized as follows

Particulars	Jan'10 to Dec'10	Jan'11 to Dec'11
Gross Receipts	Rs.10,64,62,565	Rs.10,86,65,257
Less: Deductions		
Sale Deed Value	Rs.4,07,44,617	Rs.4,28,44,626
VAT, Registration charges, stamp duty and other non taxable receipts	Rs.1,11,48,364	Rs.96,23,950
Taxable value	Rs.5,45,69,584	Rs.5,61,96,681
Abatement @ 60%	Rs.3,27,41,750	Rs.3,37,18,008
Net Taxable Value	Rs.2,18,27,833	Rs.2,24,78,672
Service Tax @ 10.3%	Rs.22,48,267	Rs.23,15,303
Actually Paid	Rs.24,69,553	Rs.23,11,233
Short/(Excess) Paid	(Rs.2,21,286)	Rs.4,070

D. An amount of Rs. 47,80,786/- has already paid towards service tax on the amounts received from customers against the liability of Rs. 45,63,570/- resulting in excess payment of Rs.2,17,216/-.

E. The levy of service tax on above arrangements has seen a fair share of litigation and amendments. In 2009, there was no clarity on whether service tax was payable or not. However, the Appellant chose to pay service tax under protest on the amount received towards the "construction agreement" on the basis of law as understood by them. Thereafter, based on Circular No. 108/2/2009 ST dated 29.01.2009, the Appellant believed that service tax was not payable and therefore discontinued payment of service tax on the said "Construction agreements".

F. As Appellant has stopped making payment of Service Tax, the Anti Evasion department initiated the proceedings against the Appellant and various statements were recorded. In the above context, a Show Cause



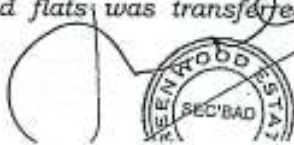
Notice (SCN) dated 21.05.2010 for the period from January 2009 to December 2009("First SCN") was issued against the Appellant.

G. Subsequently, periodical SCN's dated 23.04.2011 & dated 24.04.2012 ("Second SCN& Third SCN") was issued for the period from January 2010 to December 2010 and January 2011 to December 2010 (copies enclosed as annexure 8 & XIV). The said SCN's were issued after alleging that:

"As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by assessee thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "works contract service"

H. The aforesaid Show Cause Notices were adjudicated vide a common Order-in-Original No.51/2012-Adjn (ST)(ADC) dated 31.08.2012 wherein vide Para 17 of the impugned Order stated as follows

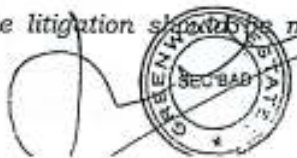
"Various flats have been sold by them to various customers in two states. First, they have executed a sale deed at semi finished stage by which the ownership of the semi-finished flats was transferred to the customer.



Appropriate stamp duty was paid on the sale deed value. No service tax been demanded on the sale deed value in light of Board Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

- I. From the above Para, it is clear that the OIO dated 31.08.2012 accepted that service tax was not demanded on sale deed value however OIO dated 31.08.2012 erred while quantifying the demand as it has included the amounts received towards Sale deeds also.
- J. Appellant has filed an Appeal before the Commissioner (Appeals) against the said order along with stay application. The Commissioner (Appeals) vide Order-in-Appeal No.39/2013 (H-II) S. Tax dated 27.02.2013 did not agree on the contentions of personal use but he did find merit in the Appellant plea of re-quantification and therefore remanded the matter back to the Original Authority to re-quantify the value of taxable services after verification of the details.
- K. Against the above referred OIA, Appellant has filed an appeal before CESTAT and CESTAT vide Final Order No.20401/2014 in ST/Stay/27332/2013 in ST/27017/2013-DB dated 25.03.2014 stated as follows

"It was submitted by the both sided that the issue is not only re-quantification but also verification of certain facts and aspects of law which have already been confirmed by Commissioner (appeals). Instead of going into issue which will result in a decision on a part of appeal, we consider it appropriate that the litigation should be merged into one



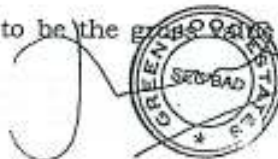
rather than having separate parallel litigation going on, therefore it was submitted that the matter may be remanded to the original adjudicating authority and he may be directed to decide all the issues in respect of both to show cause notice and also under take re-quantification as directed by the 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 remind the matter without allowing appellant to present their case again on the aspects which have concluded by the Commissioner (appeals). Therefore, while reminding the matter after setting aside the impugned order, we direct the original adjudicating authority to consider all the issues a fresh and pass a well-reasoned order, as far as re-quantification is concerned whenever there is no dispute, The re-quantification can be done as directed by Commissioner(appeals). Whatever there are dispute the matter can be decided by adjudicating authority, by passing a well reasoned and detailed order. It is made clear that the amounts already deposited need not refunded just because the impugned order has been set aside till the issue is decided."

- L. Subsequently, the adjudicating authority has granted personal hearing wherein the authorised representative requested 10 days time to give the documents for computations and written submissions.
- M. The Appellant vide its letter dated 22.12.2015 has given working of receipts and the attribution of the said receipts towards sale deeds,



construction agreements and other non-taxable receipts. The details were submitted along with copies of agreements, Financial statements and ledger copies.

- N. The Additional Commissioner has passed OIO No. 83/2016-Adjn(ST)(ADC) dated 09.06.2017 re-confirming the demand and rejected the submissions for re-quantification citing that documents were not properly submitted (Copy of OIO is enclosed as **Annexure I**).
- O. Appellant has filed an appeal before Commissioner (Appeals-II) (Copy of ST-4 is enclosed as **Annexure II**) and appeared for personal hearing on 15.03.2018.
- P. Subsequently, Appellant received Order-in-Appeal HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018 (Copy of OIA is enclosed as **Annexure III**) confirming a part of the demand and remanded back for re-quantification.
- Q. The impugned order confirmed the demands on the following grounds (Aggrieved portion):
- a. The appellant in their submission accept that they are liable to discharge service tax on the construction agreements thereby accepting service tax on activity as proposed by the impugned notice. It is therefore not in dispute upon examination of the impugned notices that, the demand has been made for the activity after the sale deed has been executed under the category of works contract service. The impugned order however has held that the appellant was undertaking construction of residential complex services and the amount received by them was to be the gross value which would be



considered for the tax demand. I find that the adjudicating authority has transgressed the boundaries of the notice to decide the classification of the services provided by the appellant when the demand restricted to that service i.e. works contract services. the same is accepted by the appellant; however, the dispute in their case was not of classification, but in respect of the inclusion of the 'Other amounts' received towards sale deed, VAT, registration charges etc.

- b. The classification of the service was not under dispute as the pervious Adjudicating Authority and Appellate Authorities. (first Appellant Authority & the Tribunal) have not interfered with the same. Further, the decision was bound within the four walls of the notice which demanded the tax on Works Contract Services. Therefore, the Adjudicating Authority had to decide the qualification of the tax demand, *albeit denovo*, by considering all the evidences.
- c. The assessment is made in terms of Works Contract Composition Scheme Rules, in vogue at that point of time. Under the cited rules, the gross value leaves no room for exclusions, other than goods in material whose title is transferred as sale, and the sales tax levied thereon. Since the elements whose values are sought to be included in the instant case does not fall within this ambit, there is no merit in the appellant's argument that the department's valuation is incorrect.
- d. Even for the period beyond 01.07.2012, when the composition rules were scrapped and Rule 2A of the Service Tax Valuation Rules underwent a retrospective amendment by Section 129 of the Finance Act, 1994 read with the sixth schedule thereof; the said



amendment is restricted only to the land value in composite work contract. In the instant case, however, the assessment (proposed in the notices) is not under the Service Tax Valuation Rules, but under Works Contract Composition Scheme Rules.

- e. The value of the 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 is undisputed. It is only the inclusion of the value of the sale deed including unfinished flat built on composite contract of land + unfinished flat) as well as elements like registration charges, stamp duty, electricity/water charges etc., that is disputed in the instant case.

To the extent aggrieved by impugned order, which is contrary to facts, law and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Appellant prefers this appeal on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.



GROUND OF APPEAL

1. Appellant submits that the impugned order (to the extent aggrieved) is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.
2. Appellant submits that it was vehemently pleaded before Id. Appellate authority that impugned activity is not liable for service tax as seen from the Para 14 to Para 39 of the grounds of the appeal in form ST-4. However, vide Para 9 -11 of the impugned OIA, it was erroneously stated that Appellant accepted the classification and also the service tax liability. hence, the finding of the impugned order is totally incorrect and requires to be set aside.
3. Appellant further submits that vide Para 9 of the impugned OIA categorically stated that demand has been made for the activity after the sale deed has been executed but while giving the remand directions, impugned OIA upheld the demand on the portion of 'sale deed' value and rejected the Appellants arguments in this behalf. Thus, the impugned OIA erred in confirming the demand on the portion of 'sale deed' as it is not only beyond the Scope of SCN but also the contrary to the own findings of the Ld. Appellate authority.

Impugned order beyond SCN

4. Appellant submits that the impugned order vide Para 11 confirmed the demand by stating that *"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 is undisputed it is only the inclusion of the value of the sale deed (including unfinished flat build on composite contract of land+ unfinished) as well as elements like registration charges, stamp duty, electricity/ water charges etc., that is disputed in the instant case."

5. In this regard, Appellant submits that the impugned order has went beyond the SCN in as much as confirming the demand on sale deed value as the SCN itself has stated that demand is not made on amount received towards sale deed value vide Para 3 of the SCN as follows

"As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by assessee thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "works contract services"



6. Appellant submits that from the above referred observation of the SCN it is clear that it has intended to demand service tax only on amounts received towards construction agreements entered with customer but not on the amounts received towards sale deed value. Therefore from the above referred paragraphs it can be seen that the impugned order has clearly travelled beyond the SCN and hence is not valid to that extent. Relied on Commissioner v. Shital International — 2010 (259) E.L.T. 165 (S.C.) wherein it was held that *"it is trite law that unless the foundation of the case is laid in the show cause notice, the revenue cannot be permitted to build up a new case against the assessee."*

7. Appellant further submits that even the original Order-in-Original No.51/2012-Adjn (ST)(ADC) dated 31.08.2012 wherein vide Para 17 of the impugned Order stated as follows

"Various flats have been sold by them to various customers in two states. First, they have executed a sale deed at semi finished stage by which the ownership of the semi-finished flats was transferred to the customer. Appropriate stamp duty was paid on the sale deed value. No service tax been demanded on the sale deed value in light of Board Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

8. From the above Para, it is clear that the first Original Order-in-Original itself has accepted that no service tax shall be demanded on sale deed value but in the *denovo* Order-in-Original the adjudicating authority has



taken a different view which is contrary to their own findings in the original adjudication order. Similarly the finding of impugned OIA also runs contrary and goes beyond the allegation leveled in SCN and the admitted legal position in the first round of litigation.

In Re: Construction Service provided by Builder prior to 01.07.2010 is not taxable

9. Appellant submits that they vehemently contended before the Commissioner (Appeals) that CBEC vide Circular No 151/2/2012 dated 10/02/2012 had clarified the applicability of service tax in light of various business models and opined that the activity of builder/developer prior to 01/07/2010 is not taxable. The same is extracted here for ready reference.

(A) Taxability of the construction service:

- (i) For the period prior to 1-7-2010 : construction service provided by the builder/developer will not be taxable, in terms of Board's Circular No. 108/2/2009-S.T., dated 29-1-2009 [2009 (13) S.T.R. C33]. The first paragraph of the above referred Circular is extracted here for ready reference.

"Many issues have been referred by the field formations, in the recent past, seeking clarification regarding the levy and collection of service tax on construction services [clauses (zzq),(zzzh) of section 65(105) of the Finance Act, 1994], in the light of varying business models. Across the country, divergent business models and practices are being followed in the construction sector. Some of these business models and



practices could be region specific."

10. In this regard, Appellant submits that the Hon'ble Commissioner (Appeals) has not considered the above referred submissions and has confirmed the demand by giving incorrect finding vide Para 09 that the Appellant had admitted their liability as follows

"The appellant in their submission accept that they are liable to discharge Service tax on the Construction agreements thereby accepting Service Tax on activity as proposed by the impugned notice. It is therefore not in dispute upon examination of the impugned notice that the demand has been made for the activity after the sale deed has been executed, under the category of Works Contract Service. The impugned order however has held that the appellant was undertaking the construction of residential complex services and the amounts received by them was to be the gross value which would be considered for the tax demand. I find that the Adjudicating Authority has transgressed the boundaries of the notice to decide the classification of the services provided by the appellant and when the demand was restricted to that service. i.e, Works Contract Services. The same is accepted by the appellant; however, the dispute in their case was not of classification, but in respect of the inclusion of the "other amounts" received towards sale deed. VAT, registration charges etc., when the Adjudicating Authority holding that the services were under construction services, he did not qualify the amounts claimed by the appellant for the exclusion;



and also held that the appellant was unable to submit any proof or evidence in respect of the exclusions claimed, rejecting the submissions"

11. Appellant submits that the Appellant have never accepted their liability therefore the finding of the impugned order is not correct. As the impugned order has not considered any of their submissions Appellant wish to reiterate the submissions made vide Para 14 to Para 20 of ST-4 (Copy enclosed as Annexure 11) and submits that the same should be considered.

In Re: Construction of Residential complex for "Personal Use" is excluded from definition of Residential Complex

12. Appellant submits that they have vehemently contended before the Commissioner (Appeals) that the construction of residential complex for personal use of excluded from definition of Residential Complex therefore the same is not liable to service tax. In this regard, Appellant submits that the impugned order has not considered the submissions made by the Appellant and has not give any reasons why the submissions made by the Appellant was not considered therefore the impugned order needs to be set aside.
13. In this regard, Appellant wish to reiterate the submissions made vide Para 21 to Para 39 of ST-4 (Copy enclosed as Annexure 11) as the same were not considered.



In Re: Service tax liability on the sale of semi-finished

14. Without prejudice to the above, Appellant submits that operative part of SCN it is clear that it is the only sole allegation of SCN (Para 2) that construction agreements are subject to service tax under the category of "works contract", no allegation has been raised to demand service tax on the sale deed value. Whereas the value of sale deed is also included in the quantification of demand. However, the Hon'ble Commissioner (Appeals-II) has remanded back the case for re-quantification of demand after giving deduction towards land value involved in the sale deed and by making the remaining part of sale deed value as taxable.
15. In this regard, Appellant submits that as the SCN itself has stated that only the value of construction agreement is liable to service tax, the finding of the impugned order to exclude only the value of land from the taxable value and making the remaining amount taxable is not at all tenable and the same needs to be set aside.
16. Appellant submits that they have made various submissions stating that sale of semi finished flat is not liable to service tax but the same were not considered by the impugned order therefore the Appellant wish to reiterate the submissions made vide Para 40 to 49 of the ST-4 (Copy enclosed as Annexure III).
17. Appellant submits that the impugned order vide Para 10 stated that *"It can be interfered from the Show Cause Notice that the assessment is made in terms of Works Contract Composition Scheme Rules, in vogue at*



that point of time. Under the cited rules, the gross value leaves no room for exclusions, other than goods in material whose title is transferred as sale, and the sales tax levied thereon. Since the elements whose values are sought to be included in the instant case does not fall within this ambit, there is no merit in the appellant's argument that the department's valuation is incorrect. Even for the period beyond 01.07.2012, when the composition rules were scrapped and Rule 2A of the Service Tax Valuation Rules underwent a retrospective amendment by Section 129 of the Finance Act, 1994 read with the sixth schedule thereunder; the said amendment is restricted only to the land value in composite work contract. In the instant case, however, the assessment (proposed in the notices) is not under the Service Tax Valuation Rules, but under Works Contract Composition Scheme Rules. Ergo, the demand is sustained under WCS category during the material period"

18. Without prejudice to the above, Appellant submits that the work and value as agreed in the 'construction agreements' would only falls under the ambit of works contract defined under section 65(105)(zzzza) of the Finance Act, 1994 and the proposition of the SCN was also same. Nowhere in the SCN or at any stage, there was no finding that 'sale deed' portion which represents the land and semi-finished flat would be 'works contract'. it is only the impugned OIA that brought it for the first time and says that it is in the nature of 'works contract' and should part of the gross amount. In this regard, it is once again submitted that 'sale deed' portion does not fall under the ambit of works contract. That being



a case, it is not warranted to add to the gross amount and impose the service tax thereon whether under composition scheme or otherwise. Further, as the works are agreed separately viz., sale deed for sale of land along with semi-finished flat, 'construction agreements' for 'future construction' thereon. Therefore the finding of the impugned OIA is incorrect and requires to be set aside.

19. Appellant further submits that the transaction of sale of semi-finished flat is not covered under the definition of works contract due to the following reasons

- a. The Appellant has entered two separate transactions with the customer, whereas the definition requires only one contract.
- b. The transaction is for sale of semi-finished flat and not for construction.
- c. As the present transaction of the Appellant is not covered under the definition of works contract, hence service tax under works contract service is not sustainable and requires to be set aside.
- d. In many cases, the "sale deed" is entered into after the completion of the building and therefore the demand cannot be justified under the said entries.
- e. Until the stage of entering into a "sale deed", the transaction is essentially one of the sale of immovable property and therefore excluded from the purview of Service Tax.

20. In this regard, Appellant submits that the impugned order has rightly given the deduction to the land value involved in the sale deed since it is



in the nature of the immovable property. However, the impugned order has failed to apply the same analogy to the semi-finished portion of the sale deed which acquired the character of the immovable property.

21. As the impugned order has not considered many of the submissions made by the Appellant in their ST-4 and also impugned order has not given any findings on the other submissions made by Appellant, Appellant wishes to reiterate detailed submissions made vide Para 50 to 69 of the ST-4. For this purpose, Respondent wish to refer the submissions made before the Hon'ble Commissioner (Appeals) on the various aspects including but not limited the issue of imposition of penalty, exclusion of registration charges/stamp duty etc., (Copy of ST-4 is enclosed as Annexure ff)
22. The Appellant craves leave to alter, add to and/or amend the aforesaid grounds.
23. The Appellant wishes to be heard in person before passing any order in this regard.

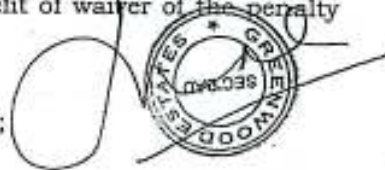


Signature of the Appellant

PRAYER

Wherefore it is prayed that

- a. To set aside the impugned order to the extent aggrieved;
- b. To hold that the service tax has been paid on the value of the construction agreement as alleged in the SCN and therefore the order needs to be set aside;
- c. If required, to hold that even on merits the amounts received towards sale deed is not taxable;
- d. To hold that no interest and penalties are leviable;
- e. To hold that Appellant is eligible for the benefit of waiver of the penalty under Section 80 of the Finance Act, 1994;
- f. Any other consequential relief shall be granted;



Appellant

VERIFICATION

I, Soham Modi, Partner of M/s. Green Wood Estates, the Appellants herein do declare that what is stated above is true to the best of our information and belief.

Verified today 5th day of September 2018

Place: Hyderabad



Appellant

DECLARATION

I/We, Soham Modi, Pay/ku of Appellant, do hereby declare that subject matter not previously filed or pending before any other legal forum including Hon'ble High Courts/Supreme Court.

The Appellant further declare that they have not previously filed any appeal, writ petition or suit regarding the impugned order, before any court or any other authority or any other Bench of the Tribunal.*

Declared today the 5th day of September 2018 at Hyderabad

The block contains a handwritten signature and a circular stamp. The stamp is from the 'SEC. BAO' (Secretary, Bangalore Appellate Office) and has 'STATES' and 'GR' visible. Below the signature and stamp, the word 'Appellant' is printed.

Appellant

Annexure - XV

Greenwood Estates
5-4-187/3 & 4, II Floor,
Soham Mansion, M.G. Road,
Secunderabad - 500 003.

C - 214 Asim Kumar Ambast
Ledger Account

1-Apr-10 to 31-Mar-11

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
3-Jun-10	By HDFC Bank Ch. No. :303048 Being chq received towards booking amount for the flat no C-214 vide receipt no 1997	Bank Receipt	BR12		25,000.00
10-Jun-10	By HDFC Bank Ch. No. :277600 Being chq received towards payment for the flat no C-214	Bank Receipt	BR11		2,50,000.00
	By HDFC Bank Ch. No. :303050 Being chq received towards payment for the flat no C-214	Bank Receipt	BR12		4,25,000.00
5-Jul-10	To HDFC Bank Ch. No. :930807 Being chq issued towards vat payment for the flat no C-214	Bank Payment	BP12	30,900.00	
7-Jul-10	By HDFC Bank Ch. No. :006429 Being chq received towards payment for the flat no C-214 vide receipt 2053	Bank Receipt	BR11		18,23,600.00
12-Jul-10	To CASH Being cash paid towards disbursement charges for flat no. C-214	Cash Payment	CP137	250.00	
1-Sep-10	To Prabhakar Reddy Registration A/C Journal Being amt debited to C-214 & credited to prabhakar reddy registration account as account recd	Journal	JV13	1,09,900.00	
7-Sep-10	To CASH Being amt debited to C-214 towards reg exp.	Cash Payment	CP15	2,000.00	
	To CASH Being amt debited to C-214 towards reg doc exp.	Cash Payment	CP16	2,000.00	
	To CASH Being amt debited to C-214 towards E.C. exp.	Cash Payment	CP17	200.00	
	By HDFC Bank Ch. No. :012202 Being chq recd towards payment for the flat no C-214 vide recd no 2115	Bank Receipt	BR18		4,26,000.00
26-Oct-10	By HDFC Bank Ch. No. :000001 Being chq recd towards payment for the flat no C-214 vide recd no 2102	Bank Receipt	BR12		2,75,218.00
10-Dec-10	To Legal Expenses Being amount debited towards stamp papers for reg. & electricity meter transfers	Journal	JV11	300.00	
	To Sales Being sales declared during the year	Journal	JV12	30,90,000.00	
	Carried Over			32,35,550.00	32,24,818.00

continued ...

176

Greenwood Estates

C - 214 Asim Kumar Ambast Ledger Account : 1-Apr-10 to 31-Mar-11

Page 2

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			32,35,550.00	32,24,818.00
10-Dec-10	To Extra Spects Being amount debited towards extra specs	Journal	JV3	48,918.00	
	By Discount Being amount debited towards on time discount Rs.54/- per sq ft.	Journal	JV4		90,000.00
20-Dec-10	By HDFC Bank Cfi. No. :0000029Being chq recd towards payment for the flat no C-214 vide recd no 1859	Bank Receipt	BR13		47,218.00
				32,82,468.00	33,62,036.00
	To Closing Balance			79,568.00	
				33,62,036.00	33,62,036.00

172

Greenwood Estates

#5-4-187/3 & 4, II Floor,
Soham Mansion, M.G. Road,
Secunderabad - 500 003.

C - 204 Flt Lt Palivela Tejodhar
Ledger Account

1-Apr-10 to 31-Mar-11

						Page 1
Date	Particulars	Vch Type	Vch No.	Debit		Credit
11-Aug-10	By HDFC Bank Ch. No. :597081 Being amt recd towards payment for the flat no C-204	Bank Receipt	BR11			25,000.00
10-Sep-10	By HDFC Bank Ch. No. :597082 Being chq recd towards payment for the flat no C-204 vide rect no 2082	Bank Receipt	BR14			2,00,000.00
24-Sep-10	By HDFC Bank Ch. No. :597084 Being chq recd towards payment for the flat no C-204 vide rect no	Bank Receipt	BR13			4,70,000.00
8-Nov-10	To CASH Being cash paid towards completion certificate charges.	Cash Payment	CP15	500.00		
29-Nov-10	By HDFC Bank Ch. No. :882905 Being amt recd towards payment for the flat no C-204 vide rect no 1832	Bank Receipt	BR16			14,70,150.00
30-Nov-10	By HDFC Bank Ch. No. :597086 Being amt recd towards payment for the flat no C-204 palivela tejodhar vide rect no 1836	Bank Receipt	BR15			2,83,971.00
3-Dec-10	To HDFC Bank Ch. No. :079482 Being cheq issued to C-204 Tejodhar towards Vat for the flat no C-204.	Bank Payment	BP16	15,200.00		
13-Dec-10	To HDFC Bank Ch. No. :079518 Being chq issued to cto Anakajiri towards bal vat payment for the flat no c-204	Bank Payment	BP16	8,755.00		
18-Dec-10	By HDFC Bank Ch. No. :597085 Being chq recd towards payment for the flat no c-204 vide rect no 1854	Bank Receipt	BR11			1,50,000.00
28-Dec-10	To Prabhakar Reddy Registration A/C Being amt debited to c-204 towards regn exp	Journal	JV13	1,14,000.00		
30-Dec-10	To CASH Being cash paid towards regn documentation exp for the flat no C-204	Cash Payment	CP112	2,000.00		
	To CASH Being cash paid towards regn documentation exp for the flat no C-204	Cash Payment	CP113	2,000.00		
	To CASH Being cash paid towards regn documentation exp for the flat no C-204	Cash Payment	CP114	200.00		
31-Jan-11	To Extra Specta Being amt debited to C-204 Flt Lt Palivela Tejodhar towards extra specta	Journal	JV1	28,683.00		
	Carried Over			1,71,338.00		25,99,121.00

continued ...

178

Greenwood Estates

C - 204 Flt Lt Palvela Tejodhar Ledger Account : 1-Apr-10 to 31-Mar-11

Page 2

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			1,71,338.00	25,99,121.00
31-Jan-11	To Sales Being sales declared	Journal	JV6	23,95,000.00	
	By Discount Being on time discount Rs. 50 per sqft.	Journal	JV7		61,500.00
	To Greenwood Residency Owners Association Being amount debited towards corpus fund	Journal	JV8	25,000.00	
	To Legal Expenses Being amount debited towards stamp papers for reg. & electricity meter transfers	Journal	JV9	300.00	
23-Feb-11	To HDFC Bank Ch. No. :189895/896/897 Being chq issued to CTO M.G. Road circle towards vat payment	Bank Payment	BP14	8,755.00	
25-Feb-11	By HDFC Bank Ch. No. :159497 Being vat pay order of c -204 cancelled	Bank Receipt	BR19		8,755.00
21-Mar-11	To HDFC Bank Ch. No. :169238 Being cheq issued towards Electricity payments flat no-C-506-165, C -501-165, C-204-165, C-216-213, C-511-167	Bank Payment	BP113	165.00	
				26,00,558.00	26,69,376.00
				68,818.00	
				26,69,376.00	26,69,376.00
To	Closing Balance				

179

Greenwood Estates
5-4-187/3 & 4, II Floor,
Soham Mansion, M.G. Road,
Secunderabad - 500 003.

C-228 Capt Saiyed Nazar
Ledger Account

1-Apr-10 to 31-Mar-11

					Page 1
Date	Particulars	Vch Type	Vch No.	Debit	Credit
10-Apr-10	By HDFC Bank Ch. No. :624144 Being Chq Received From C-128 Syied Naza towards Baking Amount vide R.No:-1943	Bank Receipt	BR14		25,000.00
23-Apr-10	By HDFC Bank Ch. No. :624145 Being Chq received from C -228 Saiyed Nazar towards payment vide R. No:-1962	Bank Receipt	BR12		2,00,000.00
31-May-10	To HDFC Bank Ch. No. :851846 Being chq issued to c/o Amalrajini towards vat for the flat no c-228	Bank Payment	BP121	30,920.00	
8-Jun-10	By HDFC Bank Ch. No. :054428 Being chq received towards payment for the flat no C-228 vide receipt no 2014	Bank Receipt	BR12		24,00,000.00
	By HDFC Bank Ch. No. :028632 Being chq received towards payment for the flat no C-228 vide receipt no 2015	Bank Receipt	BR13		1,42,524.00
13-Jun-10	By HDFC Bank Ch. No. :028633 Being chq received towards payment for the flat no c-228 vide receipt no 2016	Bank Receipt	BR11		1,05,128.00
17-Jun-10	To CASH Being cash paid towards chq disbursement charges	Cash Payment	CP1	250.00	
7-Jul-10	To Prabhakar Reddy Registration A/C Being amount credited and debited to Syed Nazar Ahmed towards registration exp for flat no. C-228	Journal	JM7	1,09,920.00	
	To CASH Being cash paid towards resgn doc exp for the flat no c-228	Cash Payment	CP11	2,000.00	
	To CASH Being cash paid towards regn mis exp for the flat no c-228	Cash Payment	CP12	2,000.00	
	To CASH Being cash paid towards ec exp for the flat no c-228	Cash Payment	CP13	200.00	
20-Aug-10	By HDFC Bank Ch. No. :028631 Being chq recd payment for the flat no c-228 capt saiyed nazar	Bank Receipt	BR1		2,67,000.00
20-Sep-10	To HDFC Bank Ch. No. :996648 being chq issued to AAO ERO - 312 towards Electricity charges for the month of Aug 2010	Bank Payment	BP18	165.00	
Carried Over				1,45,455.00	31,39,652.00

continued ...

180

Greenwood Estates

C-228 Capt Saiyed Nazar Ledger Account : 1-Apr-10 to 31-Mar-11

Page 2

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			1,45,455.00	31,39,662.00
8-Oct-10	To Sales <i>Being sales declared during the year</i>	Journal	JM2	30,92,000.00	
	To Legal Expenses <i>Being amount debited towards stamp papers for reg & electricity meter transfers</i>	Journal	JM3	300.00	
16-Oct-10	To HDFC Bank <i>Ch. No. :039147 Being cheq issued to AAO ERO 312 Towards Flat no's.</i>	Bank Payment	BP114	165.00	
20-Nov-10	To HDFC Bank <i>Ch. No. :079233 Being cheq issued to AAO ERO Towards electricity for the flat no's C-206,206,416,228,312.</i>	Bank Payment	BP17	165.00	
20-Dec-10	To HDFC Bank <i>Ch. No. :123911 Being cheq issued AAO ERO-312 towards Electricity Bill for the month of Nov.</i>	Bank Payment	BP110	165.00	
7-Jan-11	By Discount <i>Being amount credited to customer towards online payment discount Rs.50 per sft.</i>	Journal	JM1		83,250.00
17-Jan-11	To HDFC Bank <i>Ch. No. :124200 Being cheq issued to AAO ERO 312</i>	Bank Payment	BP12	165.00	
19-Feb-11	To HDFC Bank <i>Ch. No. :169779 Being cheq issued towards electricity bill for the flat no C-224,C-223,C-425,C-319,C-228 FOR THE MONTH OF JAN-11</i>	Bank Payment	BP14	165.00	
21-Mar-11	To HDFC Bank <i>Ch. No. :169235 Being cheq issued towards electricity payments flat no-C-319-165,C-312-330,C-228-165,C-416-165,C-209-330</i>	Bank Payment	BP110	165.00	
				32,38,745.00	32,22,902.00
By	Closing Balance				15,843.00
				32,38,745.00	32,38,745.00

181

173

Greenwood Estates
5-4-187/3 & 4, II Floor,
Soham Mansion, M.G. Road,
Secunderabad - 500 003.

P.Srinivas Rao C - 228
Ledger Account

1-Apr-10 to 31-Mar-11

					Page 1
Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-Apr-10	By Opening Balance				10,25,000.00
1-May-10	To Forfeit Account Being amount debited to P.srinivas Rao towards cancellation charges for the flat no C-228	Journal	JV16	2,00,000.00	
12-Jun-10	To HDFC Bank Ch. No. :851949 Being chq issued to P.sri nivas rao towards refund for the flat no C -228	Bank Payment	BP162	2,00,000.00	
Jun-10	To HDFC Bank Ch. No. :891951 Being chq issued to P. srinivas rao c-228 towards refund	Bank Payment	BP174	2,00,000.00	
26-Jun-10	To HDFC Bank Ch. No. :851952 Being chq issued to P. srinivas Rao towards refund for the flat no C -228	Bank Payment	BP155	2,00,000.00	
3-Jul-10	To HDFC Bank Ch. No. :851953 Being chq issued to P srinivas rao towards refund of Amount	Bank Payment	BP12	2,00,000.00	
10-Jul-10	To HDFC Bank Ch. No. :851975 Being chq issued to P. srinivas Rao towards refund of c-228 as the flat cancelled	Bank Payment	BP175	25,000.00	
				10,25,000.00	10,25,000.00

R & D



केन्द्रीय उत्पाद, सीमाशुल्क एवं सेवा कर आयुक्त का कार्यालय
 OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX
 हैदराबाद-॥ आयुक्तालय :: एल.बी.स्टेडियम रोड
 HYDERABAD II COMMISSIONERATE :: L.B.STADIUM ROAD
 बशीरबाग :: हैदराबाद & 500 004
 BASHEERBAGH :: HYDERABAD-500 004
 (PHONE NO: +91-40-2323 1198 & FAX NO: +91-40-2321 1655)

CNO.IV/16/197/2011-S.Tax(Gr.X)
 OR No.61/2011-Adjn(ST)ADC.Gr.X &
 OR No.52/2012-Adjn(ST)ADC

Date:31.08.2012

ORDER IN ORIGINAL NO.51/2012-Adjn(ST)ADC

(Passed by Shri R.S. Maheshwari, Additional Commissioner, Service Tax)

प्रस्तावना

PREAMBLE

1. निजी प्रयोग के लिए इसे जिस व्यक्ति को जारी किया गया यह प्रति विना मूल्य के दी जाती है This copy is granted free of charge for the private use of the person to whom it is issued.

2. जो भी व्यक्ति वित्त अधिनियम, 1994 के अंतर्गत धारा 85 संशोधित से दुषप्रभावित हो, इस प्रकार प्राप्त आदेश निर्णय के खिलाफ आदेश की प्राप्ति के तीन महीनों के भीतर आयुक्त (अपील), मुख्यालय कार्यालय, 7 वीं तल, एल.बी. स्टेडियम रोड, बशीरबाग, हैदराबाद 500 004 को अपनी अपील प्रस्तुत कर सकता है।

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

3. धारा 85 के के अंतर्गत आयुक्त (अपील) को की जानेवाली अपील फार्म, एस.टी-4 में हो और इसकी जाँच निर्धारित पद्धति के अनुसार की जानी चाहिए।

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 में की गई अपील अनुलिपि में प्रस्तुत की जानी चाहिए और उसके साथ जिस निर्णय या आदेश के विरुद्ध अपील की जा रही हो उसकी एक प्रति भी संलग्न की जानी चाहिए,

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. अपील पर और जिस निर्णय या आदेश के विरुद्ध अपील की जा रही हो उस आदेश की प्रति पर भी समुचित मूल्य के अदालती टिकट लगाए जाने चाहिए।

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.

Sub: Service Tax - Offence - Case against M/s. Greenwood Estates - Non payment of Service Tax on taxable services rendered - OIO Passed - Regarding.

M/s. Greenwood Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 (hereinafter referred as Greenwood / assessee, in short) are engaged in providing works contract service. M/s Greenwood Estates is a registered partnership firm and got themselves registered with the department for payment of service tax with STC No. AAHFG0711BST001.

2. A Show Cause Notice vide HQPOR No. 77/2010-Adjn(ST) dt. 21.5.2010 was issued for the period from January 2009 to December 2009 involving an amount of Rs. 947737/- including cess and the same has been adjudicated and confirmed vide Order-In-Original No:47/2010-ST dt. 24.11.2010. Further, the assessee has gone in appeal and the same has been dismissed vide OIA No.11/2011-S.Tax dated 31.01.2011 by the Commissioner (Appeal), Hyderabad. The present notice is issued in sequel to the same for the period from January 2010 to December 2010.

3. As per Section 65 (105) (zzzza) of the Finance Act, 1994 defines that '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
 - (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
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects."

3. As per 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 place, community hall, common water supply or effluent treatment system.

located within the 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.

4. M/s Greenwood Estates registered with the service tax department and not discharging the service tax liability properly and also not filing the ST-3 returns, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that M/s Greenwood Estates have undertaken a single venture by name M/s Greenwood Estates located at Kowkur Village, Malkajgiri Mandal, RR District and received amount from customers from towards sale of land and agreement of construction for the said period. Further, it is found that they have not filed ST-3 returns for the said period.

5. Further it is made clear on 01.02.2010 by Sri A.Shanker Reddy, Deputy General Manager(Admn) authorized representative of the assessee, that the activities undertaken by the company are providing services of construction of residential complexes and also stated that initially, they collected the amounts against booking form/agreement of sale. At the time of registration of the property, the amounts received till then will be allocated towards Sale Deed and Agreement of Construction. Therefore, service tax on amount received against Agreement of Construction portion of the amounts towards agreement of construction is aid on receipt basis. The Agreement of Sale constitutes the total amount of the land/semi finished flat with undivided share of land and value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of constructed unit as per the agreement of sale but possession was given in two phases one is land/semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks*.

6. As per the exclusion provided in Section 65(91a) of the Service Tax Act, the residential complex 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. Here "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. It is further clarified in para 3 of the Circular No.108/02/2009-ST dt. 29.01.2009 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, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer construction entire complex for one person for personal use as residence by such person would not be subjected to service tax. Further, the builder/promoter/developer normally enters into construction/ completion agreement after execution of sale deed, till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore, there is no levy of service tax on the services rendered till sale deed. i.e. on the value consideration shown in the sale deed. But, no stamp duty will be paid on the

agreements/contract against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105)(zzzza) of the Finance Act 1994.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s Greenwood Estates qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA & the Alwal Municipality vide Letter No. 3822/P4/P/H/07 dt. 9.7.2007. As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their customers under agreement of construction are taxable under Service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under works contract service.

8. M/s Greenwood vide their statement received in this office on 22.4.2011 has submitted the Flat-wise amounts received for the period from January 2010 to December 2010. The total amount received is Rs. 116514336/- against agreements of construction during the period and are liable to pay service tax including cess works out to Rs. 48,00,391/- and the interest at appropriate rates under Works Contract Service respectively.

9. M/s Greenwood are well aware of the provisions and of liability of service tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly with an intention to evade payment of Service Tax. They have intentionally not filed the ST-3 returns for the said period. Hence, the service tax payable by M/s Greenwood appears to be recovered under Sub-Section (1) of Section 73 of the Finance Act 1994.

10. From the foregoing, it appears that M/s Greenwood Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3 have contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of service tax on the value of the taxable services and Section 70 of the Finance Act 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they have not filed statutory returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details/information, with an intent to evade payment of service tax and are liable for recovery under provisions to the Section 73(1) of the Finance Act 1994 and thereby they have rendered themselves liable for penal action under Section 77 & 76 of the Finance Act 1994.

11. M/s Greenwood Estates, were issued a show cause notice asking them to show cause to the Additional Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad, within as to why:-

- (i) an amount of Rs. 48,00,391 /- (Rupees Forty eight lakhs three hundred ninety one only) including cess should not be demanded on the works contract service under the Sub-Section (1) of Section 73 of the Finance Act 1994 for the period from January 2010 to December 2010; and
- (ii) Interest is not payable by them on the amount demanded at (i) above under Section 75 of the Finance Act 1994; and
- (iii) Penalty should not be imposed on them under Section 77 of the Finance Act 1994 for the contravention of Rules and provisions of the Finance Act 1994 ; and
- (iv) Penalty should not be imposed on them under Section 76 of the Finance Act 1994 .

13. A Personal Hearing was held on 16.08.2012. Shri Jaya Prakash, Manager (Accounts) along with Shri Sudhir V. S. and Sri Harsha, Chartered Accountants, appeared for the personal hearing. While reiterating the earlier submissions made in their reply to show cause notices, they have made following submissions:-

- (i) that the Finance Act, 1994 was amended by the Finance Act, 2010 to introduce an explanation to Section 65(105)(zzq) and Section 65(105)(zzzh). Clause (zzq) relates to a service provided or to be provided to any person by any other person in relation to commercial or industrial construction and clause (zzzh), a service in relation to the construction of a complex. Both bear the following explanation:

Explanation — For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized 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 the person authorized by the builder before 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.

- (ii) Noticee further submits that reliance is place on Mohtisham Complex (P) Ltd. v. CCE 2011 (021) S.T.R.551 (Tri-Bang) wherein it was held as under- *"The deeming provision would be applicable only from 1-7-2010. Our attention, has also been taken to the texts of certain other Explanations figuring under Section 65(105). In some of these Explanations, there is an express mention of retrospective effect. Therefore, there appears to be substance in the learned counsel's argument that the deeming provision contained in the explanation added to Section 65(105)(zzq) and (zzzh) of the Finance Act, 1994 will have only prospective effect from 1-7-2010. Apparently, prior to this date, a builder cannot be deemed to be service provider providing any service in relation to industrial/commercial or residential complex to the ultimate buyers of the property."*
- (iii) Noticee further submits that Circular 1/2011- S.T. 15.2.2011 issued by Pune Commissionerate it has been clarified as under:
"Representations have been received from trade requesting clarification particularly for advance payments for services of Construction of Residential Complex rendered after 1-7-2010 and also for service tax collected by builders even where no liability exists. It is hereby clarified that where services of construction of Residential Complex were rendered prior to 1-7-2010 no Service Tax is leviable in terms of Para 3 of Boards Circular number 108/02/2009-S.T., dated 29-1-2009. The Service of Construction of Residential Complex would attract service tax from 1-7-2010. Despite no service tax liability, if any amount has been collected by the builder as "Service Tax" for Services rendered prior to 1-7-2010, the same is required to be deposited by the builder to the Service tax department. Builder cannot retain the amount collected as Service Tax.
- (iv) Without prejudice to the foregoing, Noticee submits that taxable value under the work contract service is that part of value of the works contract which is relatable to services provided in the execution of a works contract. For this purpose, valuation mechanism has been provided under Rule 2A of the valuation rules. However, an option is given to assessee to opt for a composition scheme. that composition scheme is not mandatory and if he chooses not to opt for the said scheme, service tax can be paid under Rule 2A, ibid. Therefore, the said notice is invalid in as much as it imposes the composition scheme on the assessee.
- (v) Noticee submits assuming but not admitting Service Tax, if any is payable under the head Works Contract, the value of works contract must be determined as per Rule 2A of Service Tax (Determination of Value) Rules, 2006. Noticee submits that the impugned SCN has been passed with revenue bias without appreciating the statutory provision, intention of the same and also the objective of the transaction/activity/agreement. It is unreasonable to hold that material value is nil in any construction activity merely on the ground that material value has not been furnished by noticee in his correspondence dated 22.04.2011, the same was not furnished as it was not asked for by the department, therefore it does not lead to a conclusion that the same is nil without being given an opportunity of being heard. Noticee shall submit the material Consumption for the period January 2010 to December 2010.

- (vi) Noticee further submits that where the Value of Work Contract Service shall is determined as per as per Rule 2A of Service Tax (Determination of Value) Rules, 2006, he shall also be entitled to utilize Cenvat Credit on Input services and Capital goods.
- (vii) Noticee submits that assuming but not admitting service tax if any is payable and the benefit of Rule 2A, ibid is not available for any reason, service tax payable under composition scheme at 4.12% can be paid by utilizing the Cenvat Credit in respect of Input services and Capital goods. However, impugned notice has not considered the same before arriving at the tax liability and such notices issued mechanically with revenue bias should be set-aside.
- (viii) Without prejudice to the foregoing, assuming but not admitting Noticee submits for the period January 2010 to December 2010, the SCN has claimed that amount of Rs.1165.14 Lakhs are taxable. However, noticee fails to understand how the said amount has been arrived at. Out of the total receipts of Rs. 1069.12 Lakhs during the period January 2010 to December 2010, Rs.366.12 Lakhs is received towards value of sale deed and value of land and Rs.129.93 Lakhs taxes and other charges which shall not be leviable to service tax. An amount of Rs.573.06 Lakhs has only been received towards Construction agreement. Therefore, assuming but not admitting, service tax if any is payable should be levied only on amount of Rs.573.06 Lakhs and not on the entire amount as envisaged in the construction agreement.
- (ix) Noticee submits that penalty under Section 77 for failure to submit the returns is not right in law as they have filed their half-yearly returns in form ST-3 for the said period. (Copy of the ST-3 returns enclosed). Hence, penalty on this count should be set-aside.
- (x) Noticee further submits that *mens rea* is an essential ingredient to attract penalty. The Supreme Court in the case of *Hindustan Steel v. State of Orissa [1978 (2) E.L.T. 5159 (S.C.)]* held that an order imposing penalty for failure to carry out the statutory obligation is the result of quasi - criminal proceedings and *penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contentious or dishonest or acted in conscious disregard of its obligation*. Penalty will not also be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or judicial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.
- (xi) Noticee further no evidence has been brought on record by the lower authority to prove contravention of various provisions of Finance Act, 1994 by the noticee only with intent to evade the payment of service tax. In this scenario, imposition of penalties upon them is not justified. In this regard Appellant places reliance on the decisions in the case of *In Eta Engineering Ltd. v. Commissioner of Central Excise, Chennai - 2006 (3) S.T.R. 429 (Tri.-LB) = 2004 (174) E.L.T. 19 (Tri.-LB)*. CESTAT, Northern Bench, New Delhi (Larger Bench) held - Appellants being under bona fide doubt regarding their

activity whether covered by Service tax or not, there exists reasonable cause on their part in not depositing Service tax in time - penalty not imposable in terms of Section 80 of Finance Act, 1994.

- (xii) In the case of *Ramakrishna Travels Pvt Ltd- 2007(6) STR 37(Tri-Mum)* wherein it was held that in the absence of any records as to suppression of facts, then bona fide belief is a reasonable cause under section 80 of the Finance Act, 1994.
- (xiii) Noticee further submits that where the interpretation of law is required, penal provisions cannot be invoked. Also in the case of *CCE vs. Ess Kay Engineering Co. Ltd. [2008] 14 STT 417 (New Delhi - CESTAT)* it was held that: *"It is settled position that when there is a dispute of interpretation of provision of law, the penal provisions cannot be invoked. Therefore, the Commissioner (Appeals) rightly set aside the penalty."* Hence penalty is not applicable in the instant case where there have been confusions as to applicability of service tax, classification of service etc. and law has very much been unsettled.
- (xiv) Without prejudice to the foregoing, assuming but not admitting that service tax on said service is payable, Noticee further submits that Penalty under Section 77 and Section 76 of the Finance Act, 1994 should not be imposed as there was a reasonable cause for the said failure.

Similarly, with regard to show cause notice O.R.No.52/2012-Adjn.(ST), dated 24.04.2012, covering the period January 2011 to December 2011, they have stated as follows: -

- (i) Noticee submits that for the period January 2011 to December, 2011, the show cause notice has claimed that entire receipts of Rs.11,36,37,141/- are taxable. Out of the said amount, Rs.4,36,26,000/- is received towards value of sale deed and Rs.1,00,70,537/- is towards taxes and other charges which shall not be leviable to service tax. An amount of Rs.5,99,40,694/- has only been received towards Construction agreement. Therefore, assuming but not admitting, service tax if any is payable should be levied only on amount of Rs.5,99,40,694/- and not on the entire amount as envisaged in the notice.
- (ii) Noticee further submits that service tax is to be levied on Rs.5,99,40,694/- .Thus, the service tax liability shall amount to Rs.24,69,533/-. Out of the said amount, Rs.5,98,671/- was paid earlier to the issuance of notice and acknowledged the same in the subject notice and Rs.39,666/- was paid by utilization of Cenvat Credit and the balance of Rs.18,31,216/- was paid vide Challan dated 21.02.2012. Therefore, the entire liability has been discharged by the Noticee and hence, the notice is required to be set aside.

DISCUSSION & FINDINGS

14. I have carefully gone through the records of the case, the documents relied upon for issue of show cause notice and written & oral submissions made by the assessee. There are two show cause notices on the same issue covering different period. As the issue involved is same, both the show cause notices are proposed to be adjudicated by a common order, the details of which are as

under :-

S.No.	SCN No. & date	Period covered	Service Tax Demanded
1.	O.R.No.61/2011-Adj (ST) Gr.X dtd 23.04.2011	January, 2010 to December, 2010	Rs.48,00,391/-
2.	O.R.No.52/2012-Adj (ST) dtd 24.04.2012	January, 2011 to December, 2011	Rs.46,81,850/-

15. I find that these are periodical show cause notices. The demand for the past period was confirmed vide OIO No.47/2010-ST dated 24.11.2010 and the same was also upheld by Commissioner (Appeals) vide OIA No.11/2011-S.Tax H-II dated 31.01.2011. Respectfully following the decision of the Commissioner (A), I hold that demand of Service Tax is sustainable.

16. Admittedly, the assessee has executed a residential complex project having more than 12 flats and layout of the project was approved by the civic authorities. Therefore, the project satisfies the definition of 'residential complex' as defined in the statute.

17. Various flats have been sold by them to various customers in two states. First, they have executed a 'sale deed' at semi-finished stage by which the ownership of the semi-finished flats was transferred to the customer. Appropriate stamp duty was paid on sale deed value. No service tax been demanded on the sale deed value in the light of Board's Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement.

18. The second agreement, (written or oral) and by whatever name is called, involve supply of material and labour to bring the semi-finished flat to a stage of completion. As it is a composite contract involving labour and material, it clearly satisfies the definition of 'Works Contract Service'. Therefore, the classification under work contract service and the same shall be preferred in view of the Section 65 A of the Act. The Board vide Circular No.128/10/2010-ST dated 24.08.2010, at para 2 has also clarified as under,

"2. The matter has been examined. As regards the classification, with effect from 01.06.2007 when the new service 'Works Contract' service was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because 'works contract' describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date."

19. Reliance is also placed on the decision of the Authority on Advance Ruling in the case of HAREKRISHNA DEVELOPERS-2008 (10) S.T.R. 357 (A.A.R.) wherein it has been held as under:-

Advance Ruling (Service tax) - Works Contract service - Sale of plots to prospective buyers and construction of residential units under works contract - Applicant contesting liability on the ground that impugned works contract is for construction of individual residential unit and not for residential complex - Condition on transfer of property in goods leviable to

sales tax satisfied - Records indicating construction of at least 12 residential units with common facilities and same covered under 'residential complex' as per provisions - Works contract not for construction of isolated house but for common facilities also - Impugned activity covered under Works Contract service - Sections 65(91a), 65(105)(zzzza) and 96D of Finance Act, 1994. - Individual houses built through works contract have to be viewed as parts of a residential complex rather than as stand alone house. [paras 1, 6, 7, 8

In view of the above, I hold that the impugned activity is classifiable under 'Work Contract Service'.

20. The have further submitted that composite scheme is not mandatory and service tax can be paid under Rule 2A. It is accepted that composite scheme is optional. They have not furnished the details of material cost supported by documentary evidence. In the absence of which, the demand of Service Tax on the full amount without any permissible deduction of material cost would have been very harsh on them. In this backdrop, the calculation of service tax liability in the show cause notice at composite rate is a beneficial act which does not make the show cause notice invalid. The assessee have not submitted the details of the material consumption supported by documentary evidences.

21. They have further submitted that they are entitled to utilize cenvat credit on export services and capital goods and the same has not been considered before arriving at the tax liability. Eligibility to cenvat credit is governed Cenvat Credit Rules, 2004. Credit can be taken on the strength of valid documents on eligible capital goods and input services. The assessee has to take this credit in accordance with the rules. The department is not obliged to determine their cenvat credit eligibility while demanding service tax on the taxable services. Accordingly, their contention does not have substance.

22. They have also contested the qualification of demand. They have submitted that taxes and other charges need to be deducted. I find that the demand of service tax has been made after excluding the sale deed value. The total amount collected from a customer minus sale deed value has been taken as gross amount charged for the works contract. No other deduction of any amount collected under any head, "Whether land development charges or any other charge" is permissible except VAT. It is neither their submission that VAT amount has also been included in the gross amount, nor they have furnished before me any evidence that they have paid VAT. Accordingly, their contention is rejected.

23. Penalty is a preventive as well as deterrent measure to defeat recurrence of breach of law and also to discourage non-compliance to the law of any wilful breach. Of course, just because penalty is prescribed that should not mechanically be levied following Apex Court's decision in the case of *Hindusthan Steel Ltd. v. State of Orissa* reported in 1978 (2)ELT (J159) (S.C.) = AIR 1970 S.C. 253. Section 80 of the Act having made provision for excuse from levy of penalty under section 76 if the assessee proves that there was a reasonable cause for failure under that section no other criteria is mandate of Law to exonerate from penalty. The submission of the assessee does not constitute reasonable cause so as to exonerate them from the penalties by invoking section 80 of the Act. Reliance is placed on the following case laws:-

- (i) 2007 (6) S.T.R. 32 (Tri. - Kolkata) -CCE., KOLKATA-I Versus GURDIAN LEISURE PLANNERS PVT. LTD.
- (ii) 2005 (188) E.L.T. 445 (Tri. - Chennai) -TRANS (INDIA) SHIPPING PVT. LTD. Versus CCE., CHENNAI-I.
- (iii) 2006 (1) S.T.R. 320 (Tri. - Del.)- SPIC & SPAN SECURITY & ALLIED SERVICE (I) P. LTD. Versus C.C.E., NEW DELHI

24. Accordingly, I hold that penalty under section 76 is imposable as they have contravened the provisions of law despite adverse order passed by Commissioner (Appeals).

25. Accordingly, I pass the following order :-

ORDER

- (a) In respect of show cause notice O.R.No.61/2011-Adjn.(ST) dated 23.04.2011.
 - (i) Demand of service tax (including Cess) of Rs.48,00,391/- for the period January 2010 to December, 2010 is hereby confirmed under sub section (2) of Section 73 of Finance Act, 1994 against M/s.Greenwood Estates, Secunderabad.
 - (ii) I demand interest on the service tax demanded at (i) above, under section 75 of Finance Act, 1994, at the appropriate rate, from M/s. Greenwood Estates, Secunderabad.
 - (iii) I impose a penalty @ 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, Secunderabad. However, the total amount of penalty payable in terms of section 76 shall not exceed the service tax payable.
 - (iv) I impose a penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994.
 - (v) The show cause notice issued vide O.R.No.61/2011 dated 23.04.2011 is accordingly disposed off.
- (b) In respect of show cause notice O.R.No.52/2012-Adjn.(ST) dt.24.04.2012.
 - (vi) Demand of service tax (including) of Rs.46,81,850/- for the period Jan. 2011 to Dec.2011 is hereby confirmed under sub section (2) of Section 73 of Finance Act, 1994 against M/s. M/s. Greenwood Estates, Secunderabad.

- (vii) I demand interest on the service tax demanded at (i) above, under section 75 of Finance Act, 1994, at the appropriate rate, from M/s. Greenwood Estates, Secunderabad.
- (viii) I impose a penalty @ 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, Secunderabad. However, the total amount of penalty payable in terms of section 76 shall not exceed the service tax payable.
- (ix) I impose a penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994.
- (x) The show cause notices issued vide OR NO 52/2012-ST dated 24.04.2012 is accordingly disposed off.


(R S MARESHWARI)
ADDITIONAL COMMISSIONER

✓ To
M/s. Greenwood Estates,
5-4-187/3 & 4, II Floor,
MG Road, Secunderabad - 500 003

(By REGD POST ACK DUE)

Copy submitted to

- (i) the Commissioner, Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad.
-(Through the Superintendent, Review & Tribunal, Service Tax)

Copy to

- (ii) the Additional Commissioner of Service Tax, Hyderabad-II Commissionerate, Hyderabad.
- (iii) the Assistant Commissioner of Service Tax, Hyderabad-II Commissionerate, Hyderabad.
- (iv) the Superintendent of Customs, Central Excise & Service Tax, Arrears Recovery Cell, Hqrs Office, Hyderabad-II Commissionerate, Hyderabad.
- (v) the Superintendent of Service Tax, Service Tax Group-X, Hyderabad-II Commissionerate, Hyderabad.
- (vi) Office copy/ Master copy/ Spare copy.