30385 REGISTERED / AD

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL (HYDERABAD)
FIRST FLOOR, HMWSSB BUILDING, REAR PORTION , KHAIRATABAD, HYDERABAD-500004
CUSTOMS APPEAL BRANCH

Dated: **21/08/2023**

To

Appellant as per address in table below
Respondent as per address in table below

MISC Order No. **M/30228/2023-CU[DB]** dated **2023-08-17**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/ROM/30106/2020,	ST/26165/2013	**Modi Ventures** 5-4-187/3&4, 2nd Floor, M.G. Road, SECUNDERABAD TELANGANA-500003
			Name and Address of Respondent
2	ST/ROM/30106/2020,	ST/26165/2013	**Commissioner Appeals-Secunderabad - G S T** KENDRIYA SHULK BHAVAN,L.B STADIUM ROAD, BASHEERBAG HYDERABAD TELANGANA 500004

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

Hiregange & Associates
Chartered Accountants (Hyd)
4th Floor, West Block, Srida Anushka Pride, Road No. 12, Banjara Hills, Hyderabad-500034.

04 Additional Party's Name & Address :
5 Office Copy
6 Guard File

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

****ROM APPLICATION DISMISSED.**

21/8/23

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Application No. ST/ROM/30106/2020
in Service Tax Appeal No. 26165 of 2013
(Arising out of OIO No.06/2013-Adjn (ST) (Commr) dt.17.01.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Modi Ventures
2nd Floor, MG Road,
Secunderabad, Telangana – 500 003 ......**Appellant**

VERSUS

Commissioner of Central Tax
Secunderabad - GST
LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004 ......**Respondent**

Appearance
Shri P. Venkata Prasad, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER No. M/30228/2023

Date of Hearing: 17.08.2023
Date of Decision: 17.08.2023

[Order per: ANIL CHOUDHARY]

This ROM application is filed by the Revenue for rectification of Final Order No. 30882/2020 dated 03.03.2020 on the following grounds:

a) In Para 7(iii) of the Final Order, it was concluded that "However, after 1-6-2007 but prior to 1-7-2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the buyer, it is not taxable, the service being in the nature of self service." However, in the instant case, the construction of flats was undertaken under an agreement/ contract for construction and builder agreed to construct a flat for a consideration and hence the concept of completion certificate is not relevant and thus not applicable for the levy of tax. The service rendered by Appellants is chargeable to tax under Works Contract Service and the completion certificate has no relevance in the instant case. The concept of completion certificate has been in the picture with the explanation inserted vide Circular

No.334/1/2010-TRU dated 26.2.2010 w.e.f. 1.7.2010 under Construction service. Further at Para 8.6 it was clarified that "In order to achieve the legislative intent and bring in parity in tax treatment, an Explanation is being inserted to provide that unless the entire payment for the property is paid by the prospective buyer or on his behalf after the completion of construction (including its certification by the local authorities), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly." Hence, the said observation of the Bench that the said service is to be treated as self service is factually not correct and the same is not to be treated as self service since the service has been undertaken on the buyers property which was already registered in the name of the buyers.

b) In Para 9 of the Final Order, it was concluded that "This builder has planned his business with a separate construction agreement entered into with individual flat owners. Hence they get excluded from the definition of works contract service. Therefore no service tax can be levied even for the period post 01.07.2010." The said observation has been made without appreciating the facts of the case for the reason that the Board with the explanation inserted vide Circular No.334/1/2010-TRU dated 26.2.2010 wherein vide Para 8.6 it was clarified that "In order to achieve the legislative intent and bring in parity in tax treatment, an Explanation is being inserted to provide that unless the entire payment for the property is paid by the prospective buyer or on his behalf after the completion of construction (including its certification by the local authorities), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly."

c) It is noticed that in a similar issue of a different appeal of another company by name M/s Alpine Estates, the Appellant has put forth an argument that the ST is payable w.e.f. 1.7.2010 and has been paid by them and requested to deduct certain expenditure incurred towards VAT etc., from the assessable value and the Bench vide Final Order A/30699/2019 dated 19.6.2019, also considered the same and confirmed the demand from 1.7.2010 and remanded the case for denovo proceedings for reconsideration. However, the Bench in the instant case has even set aside the demand after 1.7.2010.

2. It is urged that the mistake apparent on record may be rectified and to pass appropriate Order rectifying the Final Order No. A/30882/2020 dated 03.03.2020.

3. Heard the parties on the ROM Application.

4. Upon hearing the parties, we find no error apparent on the face of the record either any mistake of fact or mistake of law. Accordingly, the ROM Application is dismissed.

(Dictated and pronounced in the Open Court)

Sd

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Sd

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda

प्रमाणित प्रति/CERTIFIED COPY

उप पंजीकार/Dy. Registrar
सीमाशुल्क, उत्पादशुल्क और सेवा कर अपील अधिकरण
Customs Excise And Service Tax Appellate Tribunal
हैदराबाद/Hyderabad

भारत सरकार के सेवार्थ

ON INDIA GOVERNMENT SERVICE

जयते

To

30385

Order

17

EMS SPEED POST

JD424111792IN

षक / Despatcher :

ीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण

तल्ल, एच.एम.डब्ल्यू.एस.एस.बी.बिल्डिंग, खैरताबाद, हैदराबाद - 500 004.

USTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL

st Floor, Rear Portion of H.M.W.S.S.B. Building, Khairtabad, Hyderabad - 500 004.

SECUNDERABAD 500003

21-8-23

SPEED POST BOOKED UNDER B.N.P.L SCHEME

AUG 2023

A/c No................

WEIGHT.................POSTAGE

NSH HYDERABAD-18