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REGISTERED / AD

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

To

Dated: 02/11/2023

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

Final Order No. **A/30359/2023-ST[DB]** dated **2023-09-18**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Deputy/Asstt. Registrar (SERVICE TAX Appeal Branch)

Application	Appeal	
		Name and Address of Appellant
1	ST/30001/2015	**Alpine Estates** 5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.g.road, Secunderabad Telangana 500003
		Name and Address of Respondent
2	ST/30001/2015	**Commissioner of Central tax-Secunderabad - G S T** KENDRIYA SHULK BHAVAN,L.B STADIUM ROAD, BASHEERBAG HYDERABAD TELANGANA 500004

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

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

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

Deputy/Asstt. Registrar(SERVICE TAX Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Service Tax Appeal No. 30001 of 2015

(Arising out of Order-in-Original No. HYD-S.TAX-COM-03/2015 dated 31.08.2015 passed by Commissioner of Service Tax, Hyderabad)

M/s Alpine Estates **...Appellant**
5-4-187/3&4,
2nd Floor, Soham Mansion,
M.G. Road, Secunderabad-500 003

Verses

The Commissioner of Service Tax **...Respondent**
Service Tax Commissionerate
Kendirya Shulk Bhavan,
LB Stadium Road, Basheerbagh,
Hyderabad, 500 004

APPEARANCE:
Mr P. Venkata Prasad, Adv. for the appellant
Mr V.R. Pavan Kumar, A.R. for the Respondent

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

FINAL ORDER NO. 30359/2023

Date of Hearing: 18.09.2023
Date of Decision: 18.09.2023

PER ANIL CHOUDHARY

Heard the parties. The issue involved in this appeal is whether the appellant assessee is liable to service tax on the sale value of the unfinished flat, for which the agreement of sale/sale deed was entered and thereafter vide separate agreement, the appellant builder completed the construction for separate consideration.

2. Heard the parties and perused the records.

3. Learned counsel for the appellant has drawn our attention to para-2 of the show-cause notice dated 26.09.2014 ,relating to the period July 2012 to March 2014, which is reproduced below:

> "2. As seen from the records, the assessee entered into 1) sale deed for sale of undivided portion of land together with semi finished flat and 2) agreement for

> completing construction, with their customers. On execution of the sale deed the right in the property got transferred to the customer, hence the construction service rendered by the assessees 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 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 **are taxable services under "Works Contract Service".**

From a plain reading of Para 2 of the show-cause notice, it is evident that there was no intention to tax the value of the unfinished Flat, which was sold on, as is where is basis, for agreed consideration. Revenue intended to tax the balance consideration towards finishing of flat after the date of sale. However, erroneously in the show-cause notice, service tax of Rs 1,23,37,565 was demanded on the value including the value of unfinished flat sold by the appellant to the prospective buyer.

4. Learned counsel for the appellant has pointed out from the copy of the pleadings annexed to the appeal papers, that they had given the bifurcation of the gross consideration, being the value as on the date of sale of the unfinished flat, and the balance value towards completion of the flat. Accordingly, appellant had given the calculation of the tax liability on the construction activity done for the buyer, post execution of sale deed. Appellant had also mentioned in their explanation dated 29.04.2013 filed before the Range Superintendent, categorically mentioning that the receipts from the prospective buyer are first appropriated towards (a) sale deed (b) then towards agreement value of construction completed till that date (c) towards other taxable receipts (d) towards VAT, service tax, stamp duty, registration charges, excess consideration received (refundable). Further, the following had also been excluded for computation of tax liability under works contract service (a) receipt towards value of sale deed (b) receipt towards payment of VAT, service tax, stamp duty and registration charges,

(c) receipts that are in excess of the agreed sale consideration which were refunded or liable to be refunded to the purchaser. (d) receipt towards other charges like corpus fund (maintenance security), maintenance charges, electricity charges etc. received as trustee on behalf of the Owners Association. However, vide order-in-original dated 31/8/2015, the learned Commissioner confirmed the proposed demand in the show-cause notice and also appropriated the amount already paid, i.e. Rs 34,32,328/-. along with interest and towards the penalty of 10% of the tax amount so demanded under Section 76. Another penalty of Rs 10,000/- was imposed under Section 77.

5. Being aggrieved, the appellant is before this Tribunal. Learned counsel urges that by no stretch of imagination, service tax can be demanded on the value of the unfinished flat sold, including the value of undivided share in land. Till the execution of sale deed between the parties, there was no agreement of service. The appellant builder was doing the construction on his own account, or in the nature of self-service and hence the amount attributed towards the value of the unfinished flat, as per the sale deed, needs to be excluded from the gross value. Learned Counsel also draws attention towards calculation of the admitted tax, which is given at page-4 of the synopsis, wherein the appellant has demonstrated as below:

Sl No	Particulars	As per Appellant	As per OIO
1.	Gross receipts	25,94,00,456	25,86,64,906
2.	Less: Sale Deed value	17,14,36,538	
3.	Less: VAT, Registration fee, stamp duty, and other non-taxable receipts	2,54,08,390	91,18,679
4.	Taxable amount	6,25,55,528	24,95,46,227
5.	Abatement @ 40%	2,50,22,211	9,98,18,491
6.	Service Tax @ 12.36%	30,92,745	1,23,37,565
7.	Actually paid	37,54,385	34,43,562
8.	Balance demand	-6,61,640	88,94,003

According to appellant, it is evident from the table above that they have paid excess amount than the amount of service tax payable to the extent of Rs

6,61,640/-. Accordingly, learned Counsel prays for allowing their appeal with consequential relief. Learned Counsel also relies on the precedent order of this Tribunal, in their own case, being Final Order No. 30699/2019, dated 19/06/2019, as modified and clarified by Miscellaneous Order No. M/30226/ 2022 dated 11/3/2022, wherein it has been held that the appellant is only liable to pay service tax only on the unfinished portion, as construction service rendered after the execution of sale deed.

6. Learned AR for Revenue relies on the impugned order.

7. Having considered the rival contentions and after perusal of records, we hold that the appellant is not liable to service tax on the value of the unfinished flat including the value of undivided share in land as on the date of sale or Agreement of sale entered by the appellant builder with the prospective buyer. We further clarify that appellant is liable to service tax only for the receipts received towards finishing of the unfinished flat(s) on or after the date of sale. We further make it clear that appellant is not liable to service tax on other receipts like-towards electricity installation, maintenance charges, towards maintenance security, etc. We further hold that the appellant is only liable to service tax under WCS on the amount attributed to construction activity, after the agreement of sale/execution of sale deed.

8. Learned Counsel has also clarified that in the impugned order learned Commissioner has given credit by way of appropriation for the amount of tax already paid i.e. Rs 34,32,328/-, which does not include the amount of CENVAT credit and also some challans, which were not considered at that time, and if these are considered, the tax payable by the appellant comes to Rs 34,32,328/-. Accordingly, we allow the appeal and set aside the impugned order. We further direct that the appellant shall file calculation of

tax in terms of this order, and shall also give the details of taxes paid over and above the amount already appropriated in the impugned order and the adjudicating authority shall allow credit of the same after verification. If any amount is found payable, the appellant shall pay the same forthwith. Appellant shall cooperate in the reconciliation matter

9. Appeal allowed.

(order pronounced and dictated in the open Court)

-sd-

(ANIL CHOUDHARY)
MEMBER(JUDICIAL)

-sd-

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Neela reddy

प्रमाणित प्रति / CERTIFIED COPY

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