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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH: HYDERABAD
1st Floor, HMWSSB Building, Rear Portion, Khairathabad, Hyderabad
Tele No: 040-23312247, Fax No: 040-23312246

Dated: 29/11/2019

File No. :- ST/30316/2018

In the matter of :-

Greenwood Estaates
(Appellant as per address below)

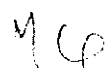
(Appellant)

Vs

Commissioner of Central Tax and
Central Excise, GST Commissionerate-
Secunderabad - G S T
(Respondent as per address below)

(Respondent)

I am directed to transmit herewith a certified copy of Order No. : A/31078/2019 dated : 19/11/2019 passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


Assistant Registrar

S.NO, Case Number, Name & Address of Appellant :-

2 ST/30316/2018 Greenwood Estaates
5-4-187/3 & 4, 11 Floor,
Soham Mansion, M G Road, Secunderabad,
Telangana-500003

S.NO, Case Number, Name & Address of Respondent :-

2 ST/30316/2018 Commissioner of Central Tax and Central Excise, GST -Secunderabad
KENDRIYA SHULK BHAVAN,
L.B STADIUM ROAD, BASHEERBAGH
HYDERABAD
TELANGANA-500004

Copy To :-

1. M/s Centax Publications Pvt. Ltd,
1512B, Bhishm Pitamah Marg
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2. M/s Taxongo Pvt Ltd,
B-IX/8183,
Vasanth Kunj
New Delhi-110070.

3. Office Copy

4. Guard File

5. Second Folder

6. Advocate^(s) / Consultant^(s) / Representative:-

Hiregange & Associates Chartered Accountants (New)
4th Floor, West Block,
Anushka Pride, Opp. Ratnadeep Supermarket, Road
Number - 12, Banjara Hills,
Hyderabad,
Telangana-500034

Assistant Registrar

DB-D-8

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

Division Bench
Court – I

Appeal No. ST/30316/2018

(Arising out of Order-in-Original No. HYD-SVTAX-000-COM-144-16-17 dt. 15.12.2016 passed by CST, Hyderabad)

Greenwood Estates

5-4-187/3 & 4, II Floor, Soham Mansion,
MG Road, Secunderabad, Telangana – 500 003
VERSUS

.....Appellant

**Commissioner of Central Tax,
Secunderabad - GST**

Kendriya Shulk Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad, Telangana – 500 004

.....Respondent

Appearance

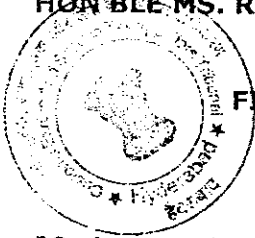
Shri P. Venkata Prasad, Chartered Accountant for the appellant.

Shri N. Bhanu Kiran, Authorized Representative for the respondent.

Coram:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)



FINAL ORDER No. A/31078/2019

Date of Hearing: 19.11.2019

Date of Decision: 19.11.2019

[Order per: P. VENKATA SUBBA RAO.]

1. This appeal is filed against Order-in-Original No. HYD-SVTAX-000-COM-144-16-17 dt. 15.12.2016.
2. Learned Chartered Accountant for the appellant submits that they are engaged in construction of residential complex services and they entered into two agreements which are (i) an agreement/ sale deed for sale of undivided portion of the land together with the semi finished portion of the flat and (ii) an agreement for construction with their customers after sale. The show cause notice alleges that on execution of sale deed the right in property got transferred and hence, construction services rendered by the appellant to the customers under agreement of construction (the second agreement) is classifiable under works contract services under section 65(105)(zzzza) of the Finance Act, 1994. Learned CA submits that they have no dispute with this assertion in the show cause notice. However, he would draw the attention of the bench to the annexure to the show cause notice at Pg.A40 to show that the demand was made on the entire amount received by the

[Handwritten signature]

appellant before occupancy certificate was issued and also the amounts received after occupancy certificate was issued i.e., the sale deed amount as well as the amounts received for construction. He would submit that they are liable to pay service tax after sale deed is executed but not prior to that. In fact, there is no such demand in the show cause notice itself. He would submit that this matter was agitated by them before the original authority who recorded in Para 13.0 and 13.6 as follows:

"13.2 I find that various flats have been sold by the assessee to various customers. Firstly, the assessee had 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, the assessee had entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement."

"13.6 I find that the assessee had also contested the quantification 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."

3. He would submit that the original authority has wrongly recorded that the demand has been confirmed after excluding sale deed value when in fact, the demand was confirmed on the entire gross amount received. He would submit the details as follows:

Particulars	As per Appellant	As per SCM
Gross Receipts	14,45,85,486	14,42,58,486
Less: Deductions		
Sale Deed Value	13,51,90,266	0
VAT, Registration charges, Stamp duty and other non-taxable receipts	51,55,789	44,17,600
Gross Taxable amount	42,39,431	13,98,40,886
Service Tax as applicable @4.12%	2,09,597	69,13,733
Actually paid	3,82,643	0
Service Tax payable/ (Excess paid)	(1,76,046)	69,13,733

4. He would further submit that after the order of the original authority was passed, they filed an application under RTI seeking breakup of demand confirmed to show how the sale deed value was deducted by the original authority while confirming the demand. The reply to the RTI query was as follows:

" In this regard, reply to the RTI query with respect to the order passed by the Commissioner, Service Tax vide OIO bearing No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016 is submitted hereunder:

[Handwritten signature]

- At Para 13.2 & 13.6 of the above mentioned OIO in respect of M/s Greenwood Estates, the adjudicating authority has observed that the demand of service tax has been made after excluding sale deed value. (Copy of the annexure/worksheet to the SCN is enclosed giving the details of quantification.)
- However, as seen from the available records, there is no separate mention of sale deed value."

5. He would submit that this goes to show that department did not have any record of the sale deed value and the amount was not deducted. He therefore, prays that matter may be remanded to the original authority with a direction to deduct the sale deed value as it was not part of the show cause notice.

6. Learned departmental representative supports the order of the original authority.

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.

8. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

- sd -

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

- sd -

(RACHNA GUPTA)
MEMBER (JUDICIAL)

प्रमाणित प्रति / CERTIFIED COPY

Veda

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सहायक निदेशक, जल निरीक्षण
जल निरीक्षण, जल निरीक्षण, जल निरीक्षण
Customs Excise & Tax Appellate Tribunal
Hyderabad / Hyderabad