

**COUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Final Order No. 20401 / 2014

Application(s) Involved:

ST/Stay/27332/2013 in ST/27017/2013-DB

Appeal(s) Involved:

ST/27017/2013-DB

[Arising out of Order-in-Appeal No. 39/2013 (H-II) S.T. dated 27/02/2013 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals-II) Hyderabad]

**Greenwood Estates
5-4-187/3&4, 2nd Floor, M.G.Road,
SECUNDERABAD
AP-500003**

Appellant(s)

Versus

**Commissioner of Central Excise, Customs
And Service Tax - HYDERABAD-III
OPP LB STADIUM ROAD,
BASHEERBAGH,
HYDERABAD,
ANDHRA PRADESH-500004**

Respondent(s)

Appearance:

Mr. Rajesh Kumar, C.A.

**HIRAGANGE & ASSOCIATES
#1010, 1st floor (Above Corp. Bank) 26th Main, 4th T
Block, Jayanagar, Bangalore
Bangalore
Karnataka
560041**

For the Appellant

Mr. N. Jagadish, A.R.

For the Respondent

CORAM:

**HON'BLE SHRI B.S.V.MURTHY, TECHNICAL MEMBER
HON'BLE SHRI S.K. MOHANTY, JUDICIAL MEMBER**

Date of Hearing: 25/03/2014

Date of Decision: 25/03/2014

Order Per : B.S.V.MURTHY

The appellant is a builder/developer of residential complex. The Impugned order has arisen as a result of two show-cause notices and the period involved is from January 2003 to December 2011.

2. The learned chartered Accountant submits that after 01.07.2010 when the definitions were amended, appellant started paying service tax. However, there is a dispute as to whether the amounts paid as consideration for the work already completed before registration of the documents after which construction agreement is entered into are to be

Included or not and whether electricity connection charges recovered from the buyers are to be included or not.

3. 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 requantification 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 requantification is concerned, wherever there is no dispute, requantification can be done as directed by Commissioner (Appeals). Wherever there are disputes, the matter can be decided by the adjudicating authority, by passing 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.

(Order dictated and pronounced in open court)

S.K. Mohanty
S.K. MOHANTY
JUDICIAL MEMBER
Pnr...



B.S.V. Murthy
B.S.V. MURTHY
TECHNICAL MEMBER

प्रमाणित प्रति / CERTIFIED COPY

[Signature]
सकनीवी अधिकारी / Technical Officer
सीमा शुल्क, उद्यम और सेवा कर अपील अधिकरण
Customs Excise and Service Tax Appeal Tribunal
(सकनीवी अधिकारी / Technical Officer)
(सकनीवी अधिकारी / Technical Officer)