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Hiregange & Associates
Chartered Accountants

Date: 02.04.2018
To
The Assistant Registrar,
Customs, Excise and Service Tax Appellate Tribunal,
1st Floor, HMWSSB Building,
Rear Portion, Khairtabad,
Hyderabad-500 004

02 APR 2018

Dear Sir,

Sub: Filing of Appeal by M/s. Greenwood Estates, against the Order of the Commissioner in Order-In-Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016

We are authorized to file Appeal in the above referred subject and we are herewith enclosing the appeal memorandum of M/s. Greenwood Estates against the Order-In-Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016 passed by the Commissioner of Service Tax, Service Tax Commissionerate, 11-5-423/1/A Sitaram Prasad Towers, Red Hills, Hyderabad-500 004 in Form S.T-5 containing in quadruplicate along with the authorization letter and Annexures.

Please find herewith enclosed **Demand Draft No.187950 dated 14.03.2018** for Rs. 10,000/- drawn on Yes Bank Begumpet, Secunderabad Branch for Appeal filing fee.

Kindly post the matter for hearing at the earliest.

Thanking You,
Yours truly,
For Hiregange & Associates
Chartered Accountants

Hiregange & Associates Chartered Accountants Hyderabad

Venkata Prasad P
Partner

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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 2018

Between:
M/s. Greenwood Estates,
#5-4-187/3 & 4, II Floor,
Soham Mansion, MG Road,
Secunderabad,
Telangana-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 of Service Tax, Service Tax Commissionerate, 11-5-423/1/A Sitaram Prasad Towers, Red Hills, Hyderabad-500 004
03.	Number and Date of the Order appealed against	Order-In-Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016
04.	Date of Communication of a copy of the Order appealed against	02.02.2018
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	No

GREENWOOD ESTATES SEC'BAD

	Commissionerate, so far as it relates to the Appellant	
07.	Designation and address of the adjudicating authority in case where the order appealed against is an order of the Commissioner (Appeals)	Not Applicable
08.	Address to which notices may be sent to the appellant	M/s Hiregange & Associates, "Basheer Villa", House No: 8-2 268/1/16/B, 2nd Floor, Sriniketan Colony, Road No. 3, Banjara Hills, Hyderabad – 500 034 **(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 Service Not in Negative list
12.	Period of Dispute	Jan 2014 to March 2015
13(i)	Amount of service tax, if any Demanded for the period of dispute	Rs.69,13,733/-
(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 u/s 76 and 77 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.3,82,643/- has been paid vide** Challan No. 3226 dated 06/2/2014 andRs. 1,35,887/- has been paid vide Challan No 00209 dated 09.03.18 (Copies ofchallans enclosed as **Annexure** I)towards mandatory pre-deposit under section 35F of Central Excise Act, 1944.

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(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]	Priority ix) – Valuation Priority x) – Others
18.	Central Excise Assessee Code, if registered with Central Excise	No
19.	Give details of Importer/Exporter Code (IEC), if registered with Director General Of Foreign Trade	No
20.	If the appeal is against an Order-in-appeal of Commissioner (Appeals), theNumber of Order-in-original covered by the said Order-in-Appeal.	Not Applicable
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 orderto the extent aggrieved and grant the relief claimed

Signature of the Appellant

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STATEMENTS OF FACTS

A. M/s. Greenwood Estates, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad (hereinafter referred to as 'Appellant') is mainly engaged in the sale of residential flats to prospective buyers during and after construction. However, in case of flats for which occupancy certificate (OC) was received and booked after OC, sale deed is executed for the entire sale consideration in most cases. Only in some cases **Sale deed is being executed for semi-finished construction along with an agreement of construction.** Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same.

B. Various charges are recovered under the said agreements as under:

   a. Value towards the sale deed

   b. Value towards the construction agreement

   c. Other Charges like electricity charges, etc.

   d. Collection of taxes like VAT, Service Tax, Stamp Duty and Registration Charges from the buyer

C. The levy of service tax on such arrangements has seen a fair share of litigation and amendments. The Appellant is also a party to the litigation process and matters for earlier periods are pending at various adjudication/judicial forums.

D. In July 2012, the service tax law underwent a paradigm shift and importantly, the exemption for personal use available for construction of residential complexes was removed. Accordingly, it became evident that service tax was payable on the construction agreement as per valuation prescribed under Rule 2A of the Service Tax (Determination of Value)

Rules, 2012 i.e. on a presumed value of 40% of the contract value. The Appellant regularly discharged the service tax on the said value in normal course. Appellant has also discharged service tax on other charges. However, it did not discharge service tax on sale deed value, which is in the nature of transaction in immovable property and on the value of tax collected as VAT, Stamp Duty etc.

E. The detailed working of the receipts and the attribution of the said receipts was already provided to the Department authorities, identified receipt wise and flat wise. The summary of the same is provided hereunder:

Description	Receipts	Non taxable	Taxable
Sum of towards sale deed	13,51,90,266	13,51,90,266	0
Sum of towards agreement of construction	39,87,512	0	39,87,512
Sum of towards other taxable receipts	2,51,919	0	2,51,919
Sum of towards VAT, Registration charges, etc	51,55,789	51,55,789	0
Total	14,45,85,486	14,03,46,065	42,39,431

F. Accordingly, the value of taxable services constituted 40% of Rs.42,39,431/- i.e. Rs.16,95,772/- and the service tax thereon @ 12.36% constituted Rs.2,09,597/-. It was also explained that the actual payment of service tax amounted to Rs.3,82,643/- which was more than the tax required to be paid.

G. This excess payment is due to the reason that at the time of giving statements the value of sale deed was at times not determined. Sale deed was executed at a later date and an *adhoc* value for sale deed was

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adopted for purposes of estimating service tax liability. Now the project has been completed and there is finality in the value of sale deed. The excess so paid has not been claimed as refund.

H. Previously several SCN's were issued covering the period uptoDecember 2013 with sole allegation that "*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".*

a. Vide Para 7 of SCN dated 21.05.2010 and Para 13 of the Order adjudicating the said SCN

b. Vide Para 2 of Second SCN dated 23.04.2011

c. Vide Para 2 of third SCN dated 24.04.2012

d. Vide Para 2 of fourth SCN dated 02.12.2013

e. Vide Para 2 of fifth SCN dated 25.09.2014

In all the above SCN's, there is error in as much including the value of sale deeds within the ambit taxable value while alleging service tax is liable only after execution of sale deed i.e. on construction agreements.

I. The present status of SCN's as referred above is as follows:

Period	SCN	Amount	Status
Jan 09 to Dec 09	HQPQR No. 77/2010 Adjn (ST) dated 21-05-2010	Rs.9,47,737/-	CESTAT waived the pre-deposit of the taxes and penalty. Disposal of main appeal is pending
Jan 10 to Dec 10	OR No.61/2011, dated 23-04-2011	Rs.48,00,391/-	CESTAT vide order dated 02.04.2014 and Com(A) vide OIA No. 39/2013 dated 27.02.2013 has sent the matter back to the
Jan 11 to Dec 11	OR No. 52/2012 Adjn	Rs.46,81,850/-	

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	(AddlCommr) dated 24-04-2012		Adjudicating authority for de-novo consideration for quantification of service tax liability. The now the matter is pending before lower authority
Jan 12 to June 12	OR No.83/2013 Adjn (ST) ADC dated 02.12.2013	Rs.16,53,853/-	Pending before CESTAT for disposal of final hearing (an appeal against Order-In-Original No. HYD-SVTAX-000-COM-02-14-15 dated 20.02.2015 has been filed)
January2012 to December 2013 (referred to in SCN as March 2014)	OR No. 156/2014-Adjn (ST)(Commr) dated:25-09-2014	Rs.92,38,975/-	

J. Subsequently SCN NoOR No.131/2015 Adjn (ST) (Commr) [C.No. IV/16/197/2011 ST Gr. X] dated 21.10.2015for the period April 2014 to March 2015 was also issued with similar error of quantifying the proposed demand of service tax in as much treating the sale deed values & other taxes as taxable value of services (annexure to SCN) while alleging that service rendered after execution of sale deed alone liable for service tax (Para 2 of SCN).

K. The liability for the impugned period and the details of the payments is summarized in the below mentioned table for ready reference:

Particulars	**Amount (Rs.)**
Gross Receipts	14,45,85,486
Less: Deductions	
Sale Deed Value	13,51,90,266
VAT, Registration charges, stamp duty and other non taxable receipts	51,55,789
Taxable amount	42,39,431
Abatement @ 40%	16,95,772
Service Tax @ 12.36%	2,09,597
Actually Paid	3,82,643
Excess Paid	1,73,046

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L. Appellant has filed a detailed reply explaining why the sale deed is not liable for service tax (Copy of SCN reply is enclosed as **Annexure**__) and attended for personal hearing on 22.06.2016. (Copy of personal hearing record is enclosed as **Annexure**__)

M. Subsequently, the notice was culminated in to Order-In-Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016confirming the demand proposed in the SCN. The order has been passed on the ground that the sale deed is not liable to service tax whereas the order has erred in computing the taxable amount. The order was passed as under

i. Confirmed the demand of an amount of Rs. 69,13,733/- being service tax payable by the assessee, M/s. Greenwoood Estates for the services rendered under the category of "Works Contract Services" during the period from January 2014 to March 2015

ii. Demand the interest at the applicable rates on the amount mentioned at SI. No. (i) from the assessee, M/s. Greeenwood Estates above under Section 75 of the Finance Act, 1994

iii. Impose penalty of 69,13,733/- on the assessee, M/s. Greenwood Estates, under Section 76 of the Financial Act, 1994.

iv. Imposed penalty of Rs. 10,000/- on the assessee, M/s. Greenwood Estates, under Section 77 of the Financial Act, 1994.

N. The impugned order confirmed the demand on the following grounds

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a. The second agreement, (written or oral) and by whatever name 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 the labour and material, it clearly satisfy 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.

b. The composite scheme is not mandatory and service tax can be paid under Rule 2A. It is accepted that composite is optional. They have not furnished the details of material cost supported by documentary evidence. In 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 has not submitted the details of the material consumption supported by documentary evidences.

c. The demand of service tax has been made after deducted. I find that the 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, "Whatever land development charges or any other charges" 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.

O. Since there was a mistake in computation of taxable amount, Appellant has filed Miscellaneous Application for rectification of mistake under Section 74 of the Finance Act, 1994 on 11.04.2017 (Copy of Miscellaneous Application is enclosed as **Annexure__**)

P. During the pendency of the rectification application, a letter dated 01.11.2017 was issued to Appellant for recovery of the tax amount demanded in the order along with interest and penalty (Copy of letter is enclosed as **Annexure__**) and Appellant has filed a writ petition with the Hon'ble High Court regarding defreeze the accounts. Hon'ble High Court has directed to dispose the rectification application and drop the recovery proceedings (Copy of High Court order is enclosed as **Annexure__**).

Q. Without granting any opportunity of being heard, Ld. Respondent vide letter dated 02.02.2018 dismissed the rectification application

"It is observed that it has been clearly stated in para 13.6 of the Order in Original that "*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, the order was passed. Once all the evidences have been considered before passing the subject Order in Original, the question of any error apparent on record do not arise"

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Aggrieved by the 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. The Appellant submits that the impugned order is ex-facie illegaland untenable in law since the same is contrary to facts and judicial decisions.

In Re: Rejection of Miscellaneous Application is invalid

2. Appellant submits that the impugned Order-in-Original was passed Commissioner of Service Tax andvide Para 13.2 stated that the *"I find that various flats have been sold by the assessed to various customers. Firstly, the assessed had executed a 'Sale Deed' at 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 light of Board Circular dated 29.01.2009. After execution of sale deed, the assessed has entered into another agreement with the customer for completion of the said flats and the service tax demand if confined to this agreement"*

3. From the above referred Para it is very clear that the service tax is not applicable on the 'Sale Deed value'. But the impugned order while

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quantifying the demand included the amounts received towards 'Sale Deeds' in taxable value. As there is a mistake apparent on record in as much as including 'Sale Deed' value in the taxable value even though it was stated as not taxable, Appellant has filed an application for rectification of Mistake (ROM) under Section 74 of Finance Act, 1994 on 11.04.2017 to rectify the quantification.

4. Subsequently, the ld. Adjudicating authority vide letter dated 02.02.2018 rejected the application made by the Appellant on the ground that *"It is observed that it has been clearly stated in Para 13.6 of the Order in Original thatIt 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, the order was passed. Once all the evidences have been considered before passing the subject Order in Original, the question of any error apparent on record do not arise"*

5. In this regard, Appellant submits that the ROM application was disposed without considering the point for which the application was filed and the same was evident from the fact that ROM application was filed to get the order rectified to the extent of deducting the 'sale deed' value from taxable value but not to get the deduction of VAT amounts from the taxable value.

6. Appellant submits that the rejection order given by the authority has not at all given any finding on the deduction of 'sale deed' value from the

taxable turnover in the Order-in-Originaland this shows that the revenue biased approach of the department. As the application was rejected in revenue biased approach, the same is not valid and the same needs to be set aside.

7. Appellant submits that with due respects, the impugned orderhas not passed appropriately considering the nature of activity, the perspective of the same, documents on record, the scope of agreement 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.

In re: The allegation in SCN and the finding of impugned OIO is that Appellant has to pay service tax on the "construction agreements", which has been paid properly by Appellant. Therefore, the SCN needs to be dropped on this ground itself:

8. Appellant submits that undoubtedly they are discharging service tax on construction agreements thereby paying service tax on activity as proposed by impugned SCN read with earlier SCN's and as confirmed by the impugned OIO. Both SCN & OIO included the value of sale deeds only at the time of quantifying the demand. As seen from the operative part of both SCN & OIO it is clear that it is only sole allegation of SCN (Para 2) & finding of OIO (Para 13.3) 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.

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In fact, as stated in Para 13.2 of the OIO, the Ld. Commissioner is in agreement that the value of the sale deed is not a subject matter of service tax.

9. As stated in the background facts, the Appellant started paying service tax on the value of "construction agreements" from July 2012 onwards. Thereafter, the said taxes have been regularly paid. The details of the taxes paid are also acknowledged in Para 4 of the SCN. On a perusal of the SCN, it is evident that the issue in the current SCNs is therefore limited to the aspect of quantification of demand. On a perusal of Para 4 of the SCN which quantifies the demand, it can be easily inferred that the demand is quantified based on statements submitted by the Appellant. The said statements for the periods are enclosed as **Annexure__**.

10. On going through the statements provided by the Appellant, it can be seen that a detailed breakup of the amount received towards "sale deeds", "construction agreements", 'other taxable receipts' and 'other non-taxable receipts' was provided.

11. However, on going through the quantification of demand provided through annexure to the SCN, it can also be observed that though the allegation is to demand service tax on construction agreements, the quantification is based on gross amounts mentioned above for all the activities including amounts received towards the "sale deeds".

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12. It is therefore apparent that the SCN/order represents an error in quantification of the demand. It may be noted that the Appellant have regularly and diligently discharged Service Tax on the value of "construction agreements" after June 2012 onwards. The above is explained through a comparative chart provided below:

Particulars	As per Appellant	As per SCN
Gross Receipts	14,45,85,486	14,42,58,486
ess: Deductions		
ale Deed Value	13,51,90,266	
AT, Registration charges, stamp duty and other non taxable receipts	51,55,789	44,17,600
axable amount	42,39,431	13,98,40,886
batement @ 40%	16,95,772	5,59,36,354
ervice Tax @ 12.36%	2,09,597	69,13,733
ctually Paid	3,82,643	0
alance Demand	(1,76,046)	69,13,733

13. The Appellant submit that once the apparent error in calculation is taken to its logical conclusion, the entire demand fails and therefore there is no cause of any grievance by the department on this ground.

In re: The Order is erroneous since it does not consider the calculations and documentation submitted in response to the SCN:

14. As stated above, Appellant submit that **both SCN and OIO do not intend to include the value of "sale deeds"** However, while quantifying the demand, the OIO in Para 13.5 states that the information about the material cost, etc. was not submitted and therefore the deduction cannot be granted.

15. Appellant submit that the above observation of the Ld. Commissioner is fundamentally incorrect. Appellant had submitted detailed breakup flat wise of the amounts attributable to the construction agreements and

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those attributable towards sale deeds vide their letter dated _____. In fact, in Para 4.1 of the OIO, there is a reference to this submission made by Appellant.

16. Appellant therefore submit that the contents of this letter can be taken cognizance of and the service tax demand be quantified correctly. Since a substantial component of the demand is on account of the value attributable towards the sale deed value, Appellant crave leave to provide as Annexure "___", the flat wise details of the sale deed value along with the amounts attributable during the disputed period.

17. From the above documentation, it is more than evident that the value attributable towards the sale deed cannot be included in the value of taxable services and the demand needs to be dropped on this ground

18. Appellant further submit that similar to the exclusion on account of sale deed value, the value attributable to statutory taxes like service tax,stamp duty, etc need to be reduced. The detailed flatwise amounts are provided as Annexure ___

19. Appellant submits that once the above deductions are provided to Appellant, then there is no further service tax remain unpaid (in fact excess paid by the appellant).

20. Since both the SCN and OIO agree on the principle that service tax cannot be demanded on the value attributable to sale deeds, Appellant are not making detailed grounds on the legal merits of the said claim.

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Notwithstanding the above, Appellant reserve their right to make additional arguments as felt necessary on this aspect of service tax on value of "sale deeds" if it is ultimately held that the OIO in principle demands tax on the value of "sale deeds"

21. Further Appellant submits that impugned order vide Para 13.6 alleges that "the demand of service tax has been made after excluding sale deed value". In this regard Appellant submits that the same is not factually correct in as much as the gross receipt considered by impugned SCN as well as order i.e. Rs.14,42,58,486 is also inclusive of Sale deed value. The detailed calculation is enclosed as annexure__.

In Re: Interest and Penaltiesare not payable/imposable:

22. 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).

23. Without prejudice to the foregoing, Appellant submits that penalty is proposed under Section 77. However, the order has not provided any reasons as to why how 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, penal provisions mentioned under section

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77 of Finance Act, 1994 is not applicable for the present case. As the subject order has not considered these essential aspects, the proposition of levying penalty under section 77 is not sustainable and requires to be dropped. Reliance is placed on 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)

24. The impugned order has relied on the following case laws for imposition of penalty

    i. 2007(6) S.T.R.32 (Tri.-Kolkata)-CCE., Kolkata-1 Versus Guardian Leisure Planners Pvt. Ltd.

    ii. 2005 (188) E.L.T.445 (Tri,-Chennai)-Trans (India) Shipping Pvt. Ltd. Versus CCE., Chennai-1

    iii. 2006 (1) S.T.R. 320 (Tri.-Del.)-Spic & Span Security & Allied Service (I) P. Ltd. Versus C.C.E, New Delhi

25. In this regard, Appellant submits that in the above referred case laws no reasonable cause has been shown with respect to non- compliance with the law by the assessee. Whereas in the instant case the following aspects reflects the compliance made by the Appellant with the law

    i. There is no suppression of facts from the department i.e, all the amounts are disclosed in statutory returns and Books of Accounts

    ii. Appellant has cooperated with the department as and when called for

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Therefore, the reliance of impugned order on the said case laws is of no use and needs to be set aside

26. The Appellant submits that imposition of penalty is not an automatic consequence on failure to pay duty hence the confirmation of penalty by the impugned order requires to be set aside.

27. The 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.

- CCE-II Vs Nita Textiles & Industries 2013 (295) E.L.T 199 (Guj)
- CCE, Bangalore-II Vs ITC Limited 2010 (257) E.L.T 514 (Kar)
- Larsen & Toubro Ltd Vs CCE., Pune-II 2007 (211) E.L.T 513 (S.C)
- Centre For Development Of Advanced Computing Vs CCE, Pune 2002 (141) E.L.T 6 (S.C).

<u>Benefit under Section 80 should be extended</u>

28. Appellant submits that there is bona fide litigation going on and issue was also debatable which itself can be considered as reasonable cause for failure to pay service tax. Accordingly waiver of penalty under Section can be made. In this regard reliance is placed on **C.C.E., &Cus., Daman v. PSL Corrosion Control Services Ltd 2011 (23) S.T.R. 116 (Guj.)**

Reddy

29. Appellant submits that as explained in above Para's they are not paying service tax on bonafide belief that same was not liable to be paid in view of

    a. Exclusion part of service definition given under section 65B(44) of Finance Act, 1994 in as much specifically excluding the sale of immovable property from levy of service tax.

    b. Activity performed till the execution of sale deed is in the nature of self service and not liable for service tax.

    c. 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 and not prior to that.

    d. Earlier orders confirming service tax on the value of construction agreement.

30. The Appellant submits that they have established the reasonable cause for the non-payment of service tax. Since the Appellant explained the reasonable cause for the nonpayment of the service tax penalty imposition of the penalty is not sustainable. In this regard we wish to rely on Commissioner of Service Tax, Bangalore Vs Motor World 2012 (27) S.T.R 225 (Kar).

31. The Appellant craves leave to alter, add to and/or amend the aforesaid.

32. 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. The set asidethe impugned order to the extent aggrieved;

b. To hold that the rejection of the Miscellaneous Application is not valid;

c. To hold that the service tax has been paid on the value of the construction agreement as alleged in the SCN and there is no further tax remain unpaid;

d. To hold that value of 'sale deed' not liable for service tax;

e. To hold that Interest and penalty are not payable/imposable;

f. To hold that Appellant is eligible for the benefit of waiver of the penalty underSection 80 of the Finance Act, 1994;

g. Any other consequential relief;

Appellant

VERIFICATION

I, Sridevi Reddy, Partner of M/s. Greenwood Estates, the Appellants herein do declare that what is stated above is true to the best of our information and belief.

Verified today 15th day of March 2018

Place: Hyderabad

Appellant

DECLARATION

I/We, Sridevi Reddy, Patna 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 __day of March 2018 at Hyderabad

Reddy

Appellant

IN THE CUSTOMS, CENTRAL EXCISE, AND SERVICE TAX APPELLATE TRIBUNAL, 1st FLOOR, REAR PORTION OF HMWSSB BUILDING, KHAIRATABAD, HYDERABAD –4

Sub: Appeal against the order of the Commissioner of Central Tax in Order-In-Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016

I, Sridevi Reddy, Partner **of M/s. Greenwood Estates,** Appellant,hereby authorize and appoint Hiregange & Associates, Chartered Accountants, Hyderabad or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above authorised representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

Executed this ___th day of March 2018 at Hyderabad

GREENWOOD ESTATES SEC'BAD

Signature

I the undersigned partner of M/s Hiregange & Associates, Chartered Accountants, do hereby declare that the said M/s Hiregange & Associates is a registered firm of Chartered Accountants and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 35Q of the Central Excises Act, 1944. I accept the above said appointment on behalf of M/s Hiregange & Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: __.03.2018

Address for service:

Hiregange & Associates,
Chartered Accountants
"Basheer Villa",
H.No: 8-2 268/1/16/B,
2nd Floor, Sriniketan Colony,
R. No. 3, Banjara Hills,
Hyderabad – 500 034

For Hiregange & Associates
Chartered Accountants

Venkata Prasad P
Partner (M. No. 236558)

I Partner/Employee/Associate of M/s. Hiregange & Associates duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

Sl No.	Name	Qualification	Mem./Roll No.	Signature
01	Sudhir V. S.	CA	219109	
02	Lakshman Kumar K	CA	241726	