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अपील सं : Appeal No. 32/2017 (SC)ST



आयुक्त(अपील-II) जीएसटी, व केन्द्रीय उत्पाद शुल्क का कार्यालय

OFFICE OF THE COMMISSIONER (APPEALS-II), GST & CENTRAL EXCISE

7 वीं मंजिल, जीएसटी भवन, एल बी स्टेडियम रोड

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अपील सं : Appeal No: 32 / 2017 (SC) ST

अपील आदेश सं : ORDER-IN-APPEAL NO: HYD-EXCUS-SC-AP2-0025-18-19-ST DATED 27.04.2018

पास करने वाले अधिकारी : श्री. बी.वी.टी. प्रसाद नायक, आयुक्त (अपील-II), हैदराबाद

Passed by : Sri. B.V.V.T PRASAD NAIK, COMMISSIONER (APPEALS-II) HYDERABAD

प्रस्तावना PREAMBLE

1. आदेश जिनके नाम जारी किया गया है उस व्यक्ति के निजी उपयोग के लिए यह प्रति मुफ्त में दी जाती है।
This copy is granted free of cost for the private use of the person to whom it is issued.
- 2.(a) कोई भी निर्धारित इस आदेश से असहमत हो तो वे वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत सीमाशुल्क, उत्पाद शुल्क व सेवाकर अपील अधिकरण, क्षेत्रीय बेंच, प्रथम तल, हैदराबाद मेट्रो जल आपूर्ति और सीवरेज बोर्ड इमारत (पीछे के हिस्से), खैराताबाद, हैदराबाद, तेलंगाना-500004 के समक्ष अपील दाखल कर सकते हैं।
Any assessee aggrieved by this order may file an appeal under Section 86 of the Finance Act, 1994 to the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench, 1st Floor, HMWSSB Building (Rear Portion), Khairatabad, Hyderabad, TS-500004.
- 2.(b) केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 एफ के खंड (iii) के अनुसार, धारा 85 की उप-धारा (5) में संदर्भित आदेश या निर्णय के विरुद्ध अपील के लिए, अपीलकर्ता को निर्णय या जिस आदेश के विरुद्ध अपील की गई हो उसके अनुसरण के लिए कर का, ऐसे मामले में जहां कर या कर और दंड विवादित हो, या दंड का, जहां ऐसा दंड विवादित हो, दस प्रतिशत जमा करना होगा : सेवा कर के मामलों में, एफ ए, 1994 की धारा 83 के प्रभाव से अधिनियम की धारा 35 एफ लागू है।
As per clause (iii) of Section 35F of the CEA, 1944, the appeal against the decision or order referred to in sub-section (5) of section 85, the appellant has to deposit ten per cent of the tax, in case where tax or tax and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Section 35F of the Act is applicable to service tax case by virtue of Section 83 of FA, 1994.
3. उप धारा (1) [या उप धारा (2) या उप धारा (2ए)] के अंतर्गत प्रत्येक अपील जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारित तारीख से तीन महीने के भीतर (मुख्य आयुक्तों या आयुक्तों की समिति) के समक्ष, जैसे भी मामला हो, दाखल किया जाना चाहिए।
Every appeal under sub-section(1) [or sub-section(2) or sub-section(2A)] of Section 86 of FA, 1994 shall be filed within three months of the date on which the order sought to be appealed against was received by the assessee, the [Committee of the Commissioners], as the case may be.
4. पैरा 2 में उल्लिखित अपील एस टी 5/ एस टी 7 प्रोफॉर्मा में चार प्रतियों में जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारित तारीख से तीन महीने के भीतर किया जा सकता है जिस आदेश के विरुद्ध अपील किया जाना चाहता हो और अपील करने के लिए लिखित मूल आदेश की उस आदेश की चार प्रतियाँ संलग्न होने चाहिए (जिसमें से एक प्रति प्रमाणित प्रति होने चाहिए)।
The appeal, as referred to in Para 2 above, should be filed in S.T.5/S.T.-7 proforma in quadruplicate; within three months from the date on which the order sought to be appealed against was communicated to the party preferring the appeal and should be accompanied by four copies each (of which one should be a certified copy), of the order appealed against and the Order-in-Original which gave rise to the appeal.
5. अपील के साथ ट्रिब्यूनल के दक्षिणी बेंच के सहायक रजिस्ट्रार के पक्ष में जहां ट्रिब्यूनल स्थित है वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से प्राप्त किए गए रेखांकित मांग ड्राफ्ट संलग्न होने चाहिए और अधिनियम की धारा 86 के अंतर्गत विनिर्दिष्ट शुल्क के भुगतान का प्रमाण भी संलग्न होने चाहिए। देय शुल्क निम्नलिखित है।
The appeal should also be accompanied by a crossed bank draft drawn in favour of the Assistant Registrar of the Tribunal, drawn on a branch of any nominated public sector bank at the place where the Tribunal is situated, evidencing payment of fee prescribed in Section 86 of the Act. The fees payable are as under:-

(क) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख या उससे कम हो तो, रुपये एक हजार;

(a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(ख) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख से अधिक, लेकिन रुपये पचास लाख से कम, हो तो, रुपये पाँच हजार;

(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(ग) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड, रुपये पचास लाख से अधिक हो तो, रुपये दस हजार;

(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees;

5.(i) उसी की धारा 86 की उप धारा (4) के अंतर्गत बताए गए कुल आपत्तियों के ज्ञापन के संबंध में कोई शुल्क देय नहीं है।

No fee is payable in respect of the Memorandum of Cross Objections referred to in Sub-Section (4) of Section 86 ibid.

6. अपीलीय ट्रिब्यूनल के समक्ष प्रस्तुत किए गए सभी आवेदनपत्र के साथ: Every application made before the Appellate Tribunal:

(क) रोक की मजूरी के लिए अपील या गलती को सुधारने के लिए अथवा किसी अन्य प्रयोजन के लिए आवेदन पत्र; या

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(ख) किसी अपील या आदेश को पुनः स्थापित करने के लिए उसके साथ रुपए पाँच सौ का शुल्क होने चाहिए।

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:

6.(i) इस उप धारा के अंतर्गत आयुक्त द्वारा दायर किए गए आवेदन के मामले में कोई शुल्क देय नहीं है।

No fee is payable in case of an application filed by Commissioner this sub-section.

7. केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 और केन्द्रीय उत्पाद शुल्क नियमावली, 2002 तथा सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलीय ट्रिब्यूनल (प्रक्रिया) नियमावली, 1982 में शामिल इससे और अन्य संबन्धित मामलों को नियंत्रित करने वाले प्रावधानों की ओर ध्यान आकर्षित किया जाता है।

Attention is invited to the provisions governing these and other related matters, contained in the Central Excise Act, 1944 and Central Excise Rules, 2002 and the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

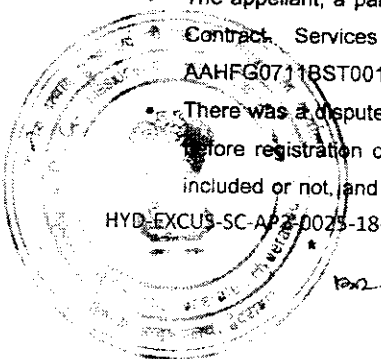
This appeal is filed by M/s Greenwood Estates, 5 - 4 - 187/ 3&4, 2nd Floor, M.G. Road, Secunderabad - 500003 (herein after referred as 'appellant') against Order-in-Original No. 83 / 2016 - Adjn (ST)(ADC) dated 09.06.2017 {in O.R.No. 61/2011 - Adjn(ST)ADC Gr.X, O.R. No.52/2012 - Adjn (ST)(ADC), New O.R.No. 26/2014 - Adjn (ST)ADC C. No. IV/16/197/2011 ST(Gr-X)} (hereinafter referred to as the impugned order) passed by the Additional Commissioner, (erstwhile) Hyderabad Service Tax Commissionerate, presently under the jurisdiction of Secunderabad GST Commissionerate, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad TS-500004 (hereinafter referred to as Adjudicating Authority).

2. The facts of the case in brief are that:

- The appellant, a partnership firm, is engaged in providing Construction of Complex, and Works Contract Services and are registered with the Department, holding STC No. AAHFG07118ST001.

- There was a dispute on whether amounts paid as consideration for the work already completed before registration of documents, after which the construction agreement is executed is to be included or not, and as to whether electricity connection charges (recovered from buyers) are to

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be included. A notice HQPOR No. 77/2010 – Adjn (ST) dated 21.05.2010 was issued for the period January, 2009 to December 2009 involving an amount of Rs.9,47,737/-. The same was adjudicated and the demand was confirmed vide Order-in-Original No. 47/2010 – ST dated 24.11.2010. The appeal on the impugned order was dismissed by the first Appellate Authority.

- Further periodic notices were issued – for the period January 2010 to December 2010 vide notice dated 23.04.2011 demanding an amount of Rs.48,00,391/- and another for the period January 2011 to December 2011 vide notice dated 24.04.2012 demanding an amount of Rs.46,81,850/-. These notices were adjudicated by the Additional Commissioner, Hyd – II Commissionerate vide OIO No. 51/2012 – Adjn (ST) ADC dated 31.08.2012 confirming the demands. The OIO dated 31.08.2012 was agitated at this forum in the first round of litigation, and was dismissed by the Commissioner (Appeals) vide Order-in-Appeal No. 39/2013 (H – II) S. Tax dated 27.02.2013 concurring with the findings of the lower authority on merit while modifying the order in terms of the quantification of the Service Tax and the penalty imposed. The Order-in-Appeal was then challenged before the Hon'ble Tribunal, who set aside the OIA in FO No.20401/2010 dated 25.03.2014, remanding the issue for being decided afresh by the Original Authority taking into the directions of the Commissioner (Appeals) in cases where there was not dispute.
- The Adjudicating Authority in the denovo proceedings arising from the remand ordered by the Tribunal as well as this forum, heard the appellant and passed the denovo adjudication order impugned herein, holding that the appellant was liable to pay tax on the construction of residential complex service. Regarding the quantification of the service tax demand for which the remand was made by the Commissioner (Appeals), it was held that the appellant had not submitted the amounts received supported by any documentary evidence and hence the figures mentioned in their submissions dated 22.12.2015 [Para 4.8 of the OIO impugned herein] were not acceptable; that the figures submitted by the appellant to the various fora were also inconsistent as detailed in the impugned order. The demand was confirmed in respect of the two notices dated 23.04.2011 & 24.04.2012 culminating in this appeal.

3. The appellant agitated the demands on the following grounds:

- That the impugned order was illegal and untenable in law;
- That the impugned order had confirmed the demand on amounts received towards sale deed value, going beyond the notice inasmuch as the notice itself states that the demand is not made on the amount received towards sale value vide para 3 of the notice "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 agreement of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under Works Contract Services."
- That the notice intended to demand Service Tax only on amounts received towards construction agreements entered with the customer but not on the amounts received towards sale deed value; that they rely on the case of Commissioner vs Shital International [2010(259) ELT 165 S.C];
- That para 17 of the Original Order-in-Original also accepted that no Service Tax shall be demanded on sale deed value but in the denovo Order-in-Original, the Adjudicating Authority has taken a different view which is contrary to their own findings;
- That the Adjudicating Authority has not considered the case afresh as ordered by the Tribunal but passed the impugned order solely based on the information submitted during the first stage of the adjudication and has not followed the directions of the Tribunal in a reasonable manner and hence needs to be set aside;
- That regarding the non-matching of the amounts as pointed out in the findings of the Adjudicating Authority, it is submitted by them that while submitting information during the proceedings the appellant submitted the

details without availing the deductions of consideration received towards certain amounts, during their submissions dated 22.12.2015 for denovo afresh, the appellant availed the deductions and hence there was a difference between the amounts; that as the tribunal had directed for decision afresh, the Adjudicating Authority could not compare the figures with the first adjudication to confirm the demand; that the Adjudicating Authority could have asked for information before deciding the case;

- That the Adjudicating Authority had not made attempt to understand the transaction undertaken by the appellant and the scope of different agreements entered with the customer and confirmed the demands based on the extracts of the Finance Act, 1994;
- That the CBEC vide circular 151/2/2012 dated 10.02.2012 clarified the applicability of Service Tax in light of various models of business and opined that the activity of the builder / developer prior to 01.07.2010 was not taxable; that the order had not specified any reason as to why the construction service provided by the builder prior to 01.07.2010 was liable to Service Tax when the clarification by the Board was issued;
- That they referred to the decision in the case of Krishna Homes vs Commissioner [2014 (34) STR 881 (Tri Del)] which analysed the issue as to the applicability of Service Tax on construction services when agreements were entered into for construction of residential units and possession was handed over on completion of the construction after full payment was made by the customer; relevant portion at para 9 of the order was reproduced; they also relied on other case laws cited;
- That in terms of the Notification No. 36/2010 – ST dated 28.06.2010, if value towards any service has been received before 01.07.2010, Service Tax on such value is exempted; that by virtue of the agreement with the customers, consideration for provision for residential complex service had been received prior to 01.07.2010 even though flats were handed over subsequently;
- That until the amendment, it was understood that contractor / designers were alone liable for Service Tax which was the specific clarification of the CBEC vide circulars cited supra;
- That the term construction of residential complex is defined under Section 65(30a) of the Finance Act, 1994 as reproduced; that the construction of the semi-finished flat was provided for the owner of the semi-finished flat / customer who in turn used such flat for his personal use and therefore the same was excluded from the definition of construction of complex service; that they refer to the circular No. 108/2/2009 – ST dated 29.01.2009 to emphasize that construction for personal use fell in the ambit of the exclusion portion of the definition of residential complex as defined under Section 65(91a) of the Finance Act, 1994; that they submit the relevance of the circular clarifying the exemption for a residential complex and residential unit and the scenario under which the Service Tax is not payable; that as the exemption is granted through Circular No. 108/2/2009 – ST dated 29.01.2009, the same cannot be denied on unreasonable grounds and wrong interpretation;
- That they also rely on the Board's clarificatory letter in F. No. B1/6/2005 – TRU dated 27.07.2005 in para 13.4 which is reproduced to emphasize that the activity of construction of a residential complex intended for personal use as residence by directly availing the services of a construction service provider was not liable to service tax;
- That they submit that there was no service tax on sale of semi-finished flat; that para 3 of the notice dated 24.04.2012 as quoted and admits the fact that only services rendered by the appellant after execution of the sale deed against agreements of construction to each of their customers was liable for Service Tax under WCS and it was accepted that Service Tax was not applicable for the sale of semi finished flat; that while quantifying the demand, the gross receipts which also includes the amount received for the sale of semi-finished flat was considered and the appellant submits that the proposition of the notice demanding Service Tax on sale of semi-finished flat is not sustainable and requires to be dropped;
- That though in the Order - in - Original No. 51/2012 – Adjn ST ADC dated 31.08.2012, it was accepted that Service Tax was not demanded on the sale deed value but while quantifying the demand it has included the amounts received towards the sale deeds; that in the denovo proceedings, the impugned order has taken a completely different view that the amounts towards sale deeds were also taxable; that the impugned order is issued on revenue bias and the U-turn of the Adjudicating Authority is not tenable and is required to be set aside;

- That the sale of the semi-finished flat is transfer of immovable property was not leviable to Service Tax and that the proposition of the notice demanding Service Tax on the appellant was not sustainable and required to be dropped;
- That the sale deed was executed for the semi-finished flat and represents the construction work already done prior to the booking of the flat by the prospective buyer and the work done until then is work for self on which there is no service tax; that further to a works contract, there should be a contract and any work done prior to entering of such contracts cannot be brought into the realm of the works contract; that reliance was place on the Apex Court judgment in the case of L&T Ltd., vs State of Kamataka [2014 (34) STR 481 (SC)], CHD Developers vs State of Haryana & others [2015 – TIOL – 1521 – HC – P&H – VAT] in this regard;
- That other non – taxable receipts like corpus fund, Electricity deposit, water charges, service tax etc., were not liable and hence shall not be included in the taxable value and that the impugned order confirmed demand on the same on the ground that the appellant had not provided the proof or evidence of the said amounts pertaining to VAT, registration charges, electricity charges etc.; defining the above mentioned payment heads in their grounds, they submitted that these charges were other non-taxable receipts being statutory charges / deposit and were mere reimbursements of expenses / charges incurred paid on behalf of the customers and does not involve any provision of service and hence the same is to be excluded from the taxable value as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006; they rely on the case of ICC Reality & Others vs CCE [2013 (23) STR 427 (Tri Mum)] , Kamataka Trade Promotion Organization vs CST 2016 – TIOL – 1783 – CESTAT – BANG and hence submitted that the demand did not sustain to that extent;
- That vide para 4.7 of the impugned order it was stated that there was no support of any evidence in respect of the charges which was not correct as they had submitted the documents evidencing the same during the denovo proceedings in 2015 itself and hence the same needs to be set aside;
- That in case any tax demand stands confirmed for the subject period, the amounts received towards construction agreement only should be taxed and not the total amount received which was in line with the notice dated 24.04.2012 & 23.04.2011 for the periods January 2011 to December 2011 & January 2010 to December 2010 respectively;
- That the details of the same confirmed vide Order - in - Original No. 51/2012 – Adjn ST ADC dated 31.08.2012 vide para 17 was tabulated by them in their grounds; that the details of the liability and the payments made by the appellant were as in para 55 of their grounds which are reproduced below:

PARTICULARS	JAN 10 TO DEC 10 (Rs)	JAN 11 TO DEC 11 (Rs)
Gross receipts	106462565	108665257
Less: deductions		
Sale deed value	40744617	42844626
VAT, regn charges, stamp duty and other non – taxable receipts	11148364	9623950
Taxable value	54569584	56196681
Abatement @ 60%	32741750	33718008
Net taxable value	21827833	22478672
Service Tax @ 10.3%	2248267	2315303
Actually paid	2469553	2311233
Short / (Excess) paid	(221286)	4070

- That the above referred details were submitted to the Adjudicating Authority by the appellant vide letter dated 22.12.2015 along with documentary evidences supporting their claim in CD form and requested to re-quantify the demand but the same was not considered while confirming the demand; that as the demand was confirmed without considering the information submitted by the appellant, the order is required to be set aside;
- That the impugned order alleged that they had misrepresented the factum of quantum of receipts before the various authorities; that they submit that the same was clear from the background of facts submitted that the difference between the amounts submitted at the stage of adjudication and with the letter dated 22.12.2015

was due to the reason that the details submitted during the original proceedings were based on manual records maintained recording receipts from each customer and the computerised records maintained thereafter which was submitted on 22.12.2015;

- That the initial payments were made on adhoc basis and there was no proper bifurcation until a consensus was arrived at before executing the agreements and hence the difference between the initial submission and submission dated 22.12.2015;
- That the Adjudicating Authority could have sought clarification on the differences and if the appellant had not responded the same could have been decided then; that the allegation made now had to be set aside;
- That cum tax benefit under Section 67 is required to be extended to them if the demand for sale of semi-finished contract is confirmed under Works Contract Service as the appellant had not collected Service Tax from the customers; that they rely on the case laws cited in this regard;
- That the Service Tax itself not being payable, question of interest does not arise as held by the Apex Court in the Prathiba Processors case;
- That penalty could not be imposed as merely automatic consequence of failure to pay duty; that they were under bonafide belief that the amounts received towards sale deeds were not subject to Service Tax and wish to rely on the decisions in this regard;
- That the benefit of Section 80 of the Act is to be extended to them in view of the reasonable causes of the given understanding of law, payment of duty voluntarily on whatever was believed as taxable and the divergent views of the courts on the issue;
- They request for the setting aside of the order and grant consequential relief.

4. I have heard the appellant on 15.03.2018, represented by Shri. P. Venkata Prasad, Chartered Accountant, who reiterated the submissions made in their grounds of appeal and had nothing more to add.

FINDINGS:

5. I have carefully perused the notice, impugned order and the submissions made by the appellant. I find that the appeal has been filed with a delay of thirteen (13) days for which the appellant has submitted that the concerned employee was not coming regularly to the office as a person in their family was hospitalized and therefore were unable to provide the information to the consultants within the due date for drafting the appeal. They regretted the same and requested for condonation. I have carefully considered the plea for condonation and find reasonable cause to admit the appeal under the proviso to Sec 85(3A) for a decision on merit.

6. Perusal of the records show that the appellant is registered with the Department for payment of Service Tax for the services 'Works Contract Services'. Intervention of the Department revealed that the appellant had entered into Sale deed for sale of undivided portion of flat together with the semi-finished portion of the flat and thereafter, an agreement for construction with the buyer of the flat.

7. The Department contended in the notices that on execution of the sale deed the right in the property got transferred to their customers and hence the construction service rendered by the appellant thereafter to their customers under agreement was taxable service as there existed service provider to service receiver relationship between them and this service rendered by them after execution of the sale deed against the agreement of construction to each of their customers to whom the land was already sold was taxable under 'Works Contract Service'. This being the case, Service Tax was arrived at in the notices as follows:

1. Notice dated 23.04.2011 – at para 8 of the notice – Tax of Rs.48,00,391/- on the total amount of Rs.11,65,14,336/- received against agreements of construction during the period January 2010 to December 2010;

2. Notice dated 24.04.2012 – at para 5 of the notice – tax of Rs.46,81,850/- on the total consideration of Rs.11,36,37,141/- received by them during the period January 2011 to December 2011; the appellant submitted Service Tax paid challan copy dated 27.11.2011 for Rs.5,98,671/- ;

8. Based on the above, the Service Tax liability was worked out and the demands raised for the periods mentioned in the notices. The appellant aggrieved by this, protested against the inclusion of the sale deed value for the purpose of demand and made their submissions. The matter was decided by the Adjudicating Authority in Order-in-Original dated 31.08.2012 which was appealed against by the appellant to the first appellate Authority who remanded the matter back for re-quantification of the demand. The matter was carried to the Tribunal by the appellant who remanded the matter to the original authority for denovo adjudication. The matter was heard and impugned order passed by the Adjudicating Authority based on the submissions of the appellant holding that the re-quantification submitted by the appellant was without basis and not supported by documentary evidence and the submissions vide their letter dated 22.12.2015 could not be accepted and hence the demands were to be confirmed. The basis of the impugned order was in holding the appellant liable to ST on construction of the residential complex in view of the definitions under Section 65(91a) and 65(105)(zzzza) of the Finance Act, 1994 being applicable to them read with Circular No. 108/2/2009 – ST dated 29.01.2009. Accordingly the order is passed and has culminated in this appeal.

9. The appellant in their submissions accept that they are liable to discharge Service Tax on the construction agreements thereby accepting Service Tax on activity as proposed by the impugned notice. It is therefore not in dispute upon examination of the impugned notices that, the demand has been made for the activity after the sale deed has been executed, under the category of Works Contract Service. The impugned order however has held that the appellant was undertaking construction of residential complex services and the amounts received by them was to be the gross value which would be considered for the tax demand. I find that the Adjudicating Authority has transgressed the boundaries of the notice to decide the

classification of the services provided by the appellant and when the demand was restricted to that service, i.e., Works Contract Services. The same is accepted by the appellant; however, the dispute in their case was not of classification, but in respect of the inclusion of the "other amounts" received towards sale deed, VAT, registration charges etc. When the Adjudicating Authority holding that the services were under construction services, he did not qualify the amounts claimed by the appellant for the exclusion; and also held that the appellant was unable to submit any proofs or evidence in respect of the exclusions claimed, rejecting the submissions.

10. In this regard, I find that the classification of the service was not under dispute as the previous Adjudicating Authority and Appellate Authorities, (first Appellate Authority & the Tribunal) have not interfered with the same. Further, the decision was bound within the four walls of the notice which demanded the tax on Works Contract Services. Therefore the Adjudicating Authority had to decide the quantification of the tax demand, albeit denovo, by considering all the evidences. I further find that the appellant in their grounds of appeal (at para 56) submit that the quantification of demand was erroneous in view of the non – consideration of the proof / evidences submitted by them in form of CD. The submissions of the appellant have to be given a serious thought. Be that as it may, I find that the ground on which the Adjudicating Authority has quantified the demand is erroneous and requires reconsideration, within the four walls of the notice, to examine the validity and quantum of the demand. It can be inferred from the Show Cause Notices that the assessment is made in terms of Works Contract Composition Scheme Rules, in vogue at that point of time. Under the cited rules, the gross value leaves no room for exclusions, other than goods in material whose title is transferred as sale, and the sales tax levied thereon. Since the elements whose values are sought to be included in the instant case does not fall within this ambit, there is no merit in the appellant's argument that the department's valuation is incorrect. Even for the period beyond 01.07.2012, when the composition rules were scrapped and Rule 2A of the Service Tax Valuation Rules underwent a retrospective amendment by Section 129 of the Finance Act, 1994 read with the sixth schedule thereunder; the said amendment is restricted only to the land value in a composite works contract. In the instant case, however, the assessment (proposed in the notices) is not under the Service Tax Valuation Rules, but under the Works Contract Composition Scheme Rules. Ergo, the demand is sustained under WCS category during the material period.

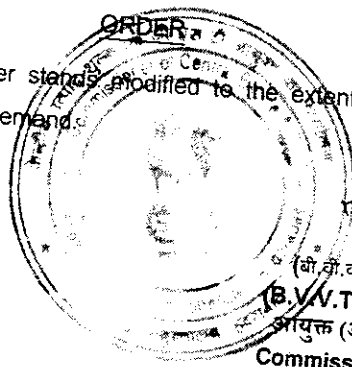
11. The value of semi-finished flats is not merely inconsequential for arriving at the gross receipts for assessment to tax. If the appellant's view is accepted, there would have been no need to issue the Show Cause Notice in the first place since the liability on the finishing contract is undisputed; it is only the inclusion of the value of the sale deed (including unfinished flat built on composite contract of land+unfinished flat) as well as elements like registration charges, stamp duty, electricity / water charges etc., that is disputed in the instant case. I find that the appellant submitted his calculations [in CD], which have not been studied or considered by the

Adjudicating Authority in his findings; hence the order is non - speaking in this regard. The submissions of the appellant regarding the quantification of the value of the contract supported by proper documentation therefore merits being re-examined by the lower authority. In the interest of justice, the matter has to be remanded back to the Adjudicating Authority for the express purpose of arriving at the value of the contract under the Works Contract Services undertaken by the appellant to correctly assess the tax liability. The appellant is also directed to submit the details to the Adjudicating Authority for perusal during the hearing granted to them in accordance with the principles of natural justice. I rely upon the rulings pronounced in the case of CCE, Panchkula vs Goel International Pvt Ltd [2015(39) STR 330 (Tri Del)] and CST vs Associated Hotels Limited [2015 (37) STR 723 (Guj)] in ordering the remand.

12. In view of the discussions recorded above, para 5(a)(i) and 5(b)(i) of the impugned order is set aside and remanded to the Adjudicating Authority who is directed to:

- (a) Examine the evidence presented in the CD regarding the appellant's residential unit-wise liability under the composition scheme;
- (b) The elements of VAT (if any), and value of goods whose title stands transferred as sale alone is excludible, the same may be excluded;
- (c) Registration charges / stamp duty are not excluded in the composition scheme, hence includible for assessment to WCS; it is expressly clarified that land is not 'goods' for the purpose of the Composition Scheme, and the land value mentioned in the sale deed is includible for assessment under the composition scheme;
- (d) There is force in the contention that electricity / water charges are collected and paid to the utilities for the corresponding services; that the same represent reimbursable expenses out of ambit of the levy, as settled by the Apex Court in UNION OF INDIA Versus INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD. [2018 (10) G.S.T.L. 401 (S.C.)]; therefore I hold that the same shall be excluded for assessment to tax; and that cum-tax benefit shall be extended under Sec 67(2) on the values included from the sale deed.
- (e) Interest, a quintessential liability accompanying belated payment of tax, is to be computed on such modified tax liability arrived at supra. Para 5(a)(ii) and 5(b)(ii) of the impugned order stands modified accordingly;
- (f) Penalty under Sec 76 has been adjudged on 09.06.2017, and the penal provision as amended on 14.05.2015 shall apply, as mandated by Sec 78B. Therefore, Para 5(a)(iii) and 5(b)(iii) of the impugned order stand modified to the effect that the quantum of penalty under Sec 76 in each notice is restricted to 10% of the tax liability computed in the denovo proceedings in compliance with this remand.

The impugned order stands modified to the extent discussed supra and the appeal is partly allowed by way of remand.



(बी.वी.टी. प्रसाद नायक)
B.V.T PRASAD NAIK
आयुक्त (अपील-II), हैदराबाद
Commissioner (Appeals-II)
Hyderabad

By SPEEDPOST To

1. M/s Greenwood Estates, 5 - 4 - 187/ 3&4, 2nd Floor, M.G. Road, Secunderabad - 500003.

2. M/s. Hiregange & Associates, HIREGANGE & ASSOCIATES, Chartered Accountants, 4th Floor, West Block, Srida Anushka Pride, Opp. Ratnadeep Supermarket, Road Number 12, Banjara Hills, Hyderabad, Telangana 500034.

Copy Submitted to: The Chief Commissioner, Central Tax & Customs, Hyderabad Zone, Hyderabad.

Copy to

1. The Commissioner of Central Tax & GST, Presently Secunderabad Commissionerate, (Erstwhile Service Tax Commissionerate) GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad, TS-500004. [Jurisdictional Commissioner]

2. The Additional Commissioner, Secunderabad Commissionerate, (Erstwhile Service Tax Commissionerate), GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad, TS-500004. [Respondent]

3. Master copy

