MNM f

FAX : 040-23312246
TEL : 040-23312247

OUTWARD NO. : 30756
REGISTERED / AD / SPEED POST

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

Dated: 03/10/2019

File No. :-ST/27013/2013

MODI PROPERTIES PVT. LTD.
INWARD
No. 421
Date 24/10/19
Sign.
SEC'BAD

In the matter of :-

Modi And Modi Constructions
(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/30575/2019 dated : 03/10/2019 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 :-

1 ST/27013/2013 Modi And Modi Constructions
5-4-187/3&4, 2nd Floor, M.g. Road
SECUNDERABAD
TS-500003

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

1 ST/27013/2013 Commissioner of Central Tax and Central Excise,
GST Commissionerate-Secunderabad
SHULK BHAVAN,L.B STADIUM ROAD, BASHEERBAGH
HYDERABAD
TELANGANA-500004

Copy To :-
1.M/s Centax Publications Pvt. Ltd,
1512B, Bhidm Pitamah Marg
Opp: ICICI Bank of Defence colny
New Delhi-110003.
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[AS] / Consultant[AS] / Representative:-

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

Assistant Registrar

DB-D-8

issued proposing to demand service tax on amounts received towards construction agreements entered into by the appellant. This Bench vide Final Order No. A/30172-30178/2019 dt.31,01.2019 set aside the demands raised in the SCN holding that service tax is not applicable on construction services provided by the builder prior to 01.07.2010.

3. The present appeal pertains to the subsequent two SCNs for subsequent periods, part of which falls prior to 01.07.2010 and the rest post 01.07.2010. These demands are as follows:

SCN reference	Period	Proposed Demand
SCN OR No. 59/2011-Adjn (S.T.) Gr.X dated 23.04.2011	Jan 2010 to Dec 2010	Rs.12,06,447/-
SCN OR No. 53/2012-Adjn (Addl.Commr) dated 24.04.2012	Jan 2011 to Dec 2011	Rs.27,61,048/-
Total		**Rs.39,67,475/-**

4. It is alleged in the SCNs that the assessee had built residential complexes and have entered into a sale deed for sale of undivided portion of land together with semi finished portion of the flat/house and a separate agreement for completion of construction with customers. On execution of sale deed the right in property got transferred to the customer. There is no demand up to this stage. Thereafter, under an agreement of completion of construction was entered into which is taxable as there exists service provider and service recipient relationship between them. It is also alleged in the SCN that this construction agreement entered into by the appellant includes both transfer/deemed transfer of the property in goods and rendition of services. Therefore, these services fall under the category of "works contract service" and are chargeable to service tax under Section 65(105)(zzzza) of the Finance Act, 1994. It is further stated in the SCN that an optional composition scheme for payment of service tax in relation to works contract service has been provided vide notification 32/2007-ST dt.22.05.2007 effective from 01.06.2007 under Works Contract Service (Composition Scheme for payment of Service Tax) Rules, 2007. Under the said scheme, the assessee has to pay an amount equal to 2% of the gross amount charged for works contract including the VAT or sales tax paid. Further, with effect from 01.03.2008 the aforesaid rate of 2% has been enhanced to 4% vide notification 07/2008-ST dt.01.03.2008. The

law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

a. "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

b. "residential unit" means a single house or a single apartment intended for use as a place of residence;"

2) He would submit that unless the building or buildings have more than 12 residential units each the same cannot be called as residential complexes. For this reason, they are not liable to pay service tax on the services rendered. He relies on the law of Macro Marvel Projects Ltd v Commissioner [2008 (12) STR 603 (Tribunal)]. Para 2 and 3 of which read as follows:

"2. The appeal is against demand of service tax of Rs. 15,63,145/- for the period 16-6-2005 to 30-11-2005 under the head "construction of complex" service under Section 65(30a) of the Finance Act, 1994. The lower authorities have also imposed a penalty on the assessee under Section 76 of the said Act. The impugned demand is on the amount collected by the appellants from their clients as consideration for construction and transfer of residential houses. It is the case of the appellants that the work done by them fell within the ambit of 'works contract', which became taxable only with effect from 1-6-2007 vide Section 65(105)(zzzza) of the Finance Act, 1994. It is also submitted that service tax cannot be levied from the appellants under any other head for any period prior to 1-6-2007. We have heard the learned Jt. CDR also, who submits that the case may at best be remanded to the authorities below, who apparently did not examine all the submissions of the party. After examining the records of the case, we do not think that a remand is warranted in this case inasmuch as the authorities below chose to sustain the demand of service tax raised in the show-cause notice, regardless of the fact that construction of individual residential units was not included within the scope of "construction of complex" defined under Section 65(30a) of the Finance Act, 1994. The definition reads as follows :-

"Construction of complex" means -

(a) construction of a new residential complex or a part thereof; or
(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex.

'Residential complex' stands defined under clause (91a) of Section 65 of the Act, which is as follows :-

"(91a) "residential complex" means any complex comprising of -

(i) a building or buildings, having more than twelve residential units;
(ii) a common area; and

case of Baba Constructions Pvt Ltd [2018 (15) GSTL 345] set aside the demand where less than 12 residential units were in each building. This judgment of the Tribunal Allahabad was upheld by the Hon'ble Supreme Court as reported in 2018 (15) GSTL J120 (SC). He would submit that as the issue has been settled by the Hon'ble Supreme Court not once but twice, the entire demand needs to be set aside on this ground alone.

4) As an alternative argument, he would submit is that even if demands are liable to be raised, no service tax is chargeable for construction services prior to 01.07.2010 and in the first demand covering the period January, 2010 to December, 2010 part of the demand is prior to 01.07.2010. He further submits that the demands were raised on the value of sale of land, VAT, registration charges under non-taxable receipts which cannot be charged to service tax. The details of which are as follows.

Particulars	Jan 2010 to Dec 2010	Jan 2011 to Dec 2011	Total
Gross receipts	3,86,50,693	6,54,15,715	10,40,66,408
Less: Amounts received for the period January 2010 to June 2010	1,83,60,608	Not Applicable	1,83,60,608
Amount received during the period July 2010 to December 2010	2,02,9,085	Not Applicable	8,57,05,800
Less: Sale of land	80,04,000	1,31,71,000	2,11,75,000
Less: VAT, Registration Charges and other non-taxable receipts	13,93,710	37,11,713	51,05,423
Taxable Value	**1,08,92,375**	**4,85,33,002**	**5,94,25,377**
ST Liability @4.12%	4,48,766	19,99,560	24,48,326
Service Tax paid			23,80,124
Payable/(Excess paid)			68,202

5) He fairly submits that the above computational dispute was agitated by them before the first appellate authority who remanded the matter back to the lower authority on this ground. He also argues as a third alternative argument that the contracts entered into with individuals for completion of the semi finished houses is meant for personal use and therefore, is excluded from section 65(91a). Even on this ground the demand cannot be raised on such agreements. As far as the construction done prior to sale is concerned, it is a self service and is

explanation was pointed out or considered either in Macro Marvel Projects Ltd (supra) or in the case of Baba Constructions Pvt Ltd (supra) either before the Tribunal or before the Hon'ble Supreme Court. Therefore, there is no force in the argument that individual houses cannot form part of the residential complex. Further, he would submit that in both the above cases, there was specific finding of the Tribunal that there was no residential complex built in those projects. In the present cases, both from the records and from the agreement it is evident that a plot of land is taken by the appellants and developed into a complex of individual residential units with some common areas. Therefore, the appellant's activity qualifies as residential complex services and accordingly, demands are sustainable. Therefore, the impugned order needs to be upheld and the appeal needs to be rejected.

7. Insofar as the question of computation is concerned, he would submit that the first appellate authority has already remanded the matter to the original authority for calculation.

8. We have considered the arguments on both sides and perused the records. We find from the records that the appellant has taken a piece of land and developed that into a complex of individual residential units in the form of row houses with some common areas for parking, roads, etc. We have also seen the photographs produced by the appellant. These clearly indicate that they are row houses with some common boundaries along with roads and other facilities. The first question to be considered is whether this qualifies as residential complex or otherwise. Learned counsel for the appellant submits that individual houses cannot be considered as residential complexes because each building needs to have at least 12 residential units for it to be qualified as a complex as per the definition under section 65(91) of the Finance Act, 1994, as has been held in the case of Macro Marvel Projects Ltd (supra) and subsequent judgments.

9. Learned DR correctly points out that while passing the order in the case of Macro Marvel Projects Ltd (supra) the Tribunal has considered a truncated portion of the definition of residential complex. They have not

11. The second question is the nature of the contract on which service tax is proposed to be charged. The SCN itself states that the plots along with semi-finished buildings were sold to the buyers under the sale agreement. Thereafter, a separate agreement was entered into with the individual home owners for completion of the building/structure as per the agreement. In other words, there is no agreement for completion of the entire complex but there are a number of agreements with each individual house owner for completion of their building. In other words, the individual house owner is engaging the appellant for construction of the complex for his personal use as residence. The explanation to section 65(91a) categorically states that personal use includes permitting the complex for use as residence by another person on rent or without consideration. Therefore, it does not matter whether the individual buyer uses the flat himself or rents it out. There is nothing on record to establish that the individual buyers do not fall under the aforesaid explanation. For this reason, we find no service tax is chargeable from the appellant on the agreements entered into by them with individual buyers for completion of their buildings as has been alleged in the SCN. Consequently, the demand needs to be set aside and we do so. Accordingly, the demands for interest and imposition of penalties also need to be set aside.

12. In conclusion, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in the open court on 3 - 10 - 2019)

Separate concurring order recorded.

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL)

Sulekha Beevi 26/9/2019

-Sd-

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Veda