MODI PROPERTIES PVT. LTD. SEC'BAD INWARD No. 916 Date 15/10/18 Sign.

आयुक्त(अपील - II) जीएसटी एवं उत्पाद शुल्क का कार्यालय
OFFICE OF THE COMMISSIONER (APPEALS – II) GST & CENTRAL TAX

7 वीं मंजिल,जीएसटी भवन,एल बी स्टेडियम रोड
7th FLOOR, GST BHAVAN, L B STADIUM ROAD
बशीर बाग :: हैदराबाद ,BASHEER BAGH,HYDERABAD, TS-500004
TELEPHONE:040-23234219/23231160 email: commrappl-sthyd@nic.in / cgst.hydappeals2@ gov.in

अपील सं : Appeal No:31 / 2018 (SC) ST /886.

अपील आदेश सं :ORDER-IN-APPEAL NO:HYD – EXCUS – MD - AP2 – 0092 – 18 –19 – ST DATED 28.09.2018

पास करने वाले आधिकारी :श्री.बी.वी.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 निर्धारिती 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), खैरताबाद, हैदराबाद, तेलंगाना-500004 के समक्ष अपील दायर 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 एफ़ 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, एफ़ ए, 1994 की धारा 83 के प्रभाव से अधिनियम की धारा 35 एफ़ लागू है।
As per clause (iii) of Section 35F of the CEA,1944, the appeal against the decision or order referred to insub-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 निर्धारिती द्वारा प्राप्त करने की तारीख से तीन महीने के भीतर (मुख्य आयुक्तों या आयुक्तों की समिति] के समक्ष, जैसे भी मामला हो, दायर 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 निर्धारिती के पास पहुँचने की 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 वहाँ 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 हज़ार;
(*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 हज़ार;
(*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 हज़ार;

(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 मंजूरी 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 पुन: 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 under 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. Vista Homes,** Door No. 5-4-187/3, Soham Mansion, M.G. Road, 2nd Floor, Ranigunj, Hyderabad - 500003 (hereinafter referred to as the "**appellant**"), against the **Order-in-Original No. 01/2018 – Adjn (Supdt) dated 28.05.2018** [in C. No. IV/16/18/2017 – III - B] (hereinafter referred to as the "**impugned order**") passed by the Superintendent of GST & Central Tax, Ramgopalpet III Range, Secunderabad Division, Secunderabad Commissionerate (hereinafter referred to as the **"Adjudicating Authority"**).

2. The appellant are service providers and have obtained Service Tax registration No. AAGFV2068PSD001 for rendering Construction of Residential Complex Service and Works Contract Services. Verification of records revealed that

(i) The appellant paid their Service Tax liability belatedly during the period from October 2012 to December 2014 as tabulated in para 2 of the impugned order but had not paid the interest on the belated payments which amounted to Rs.1,14,351/-.

(ii) The appellant had short paid the tax for the quarter January 2015 to March 2015 as verified from the Service Tax returns filed online and the same amounted to Rs.6,03,803/-.

3. Based on the above observations, a notice 28/2016 – 17/Asst. Commissioner, Circle – V in C. No. V/ST/54/28/2015 – 16 Gr.54 dated 17.02.2017 was issued demanding the above amounts, interest on the short

paid amount and proposing to impose penalty. The appellant submitted his reply contending that the interest amount was only Rs.28,576/- for the reasons submitted and that they had not shown the payment particulars in the ST3 but had paid the tax for the said period and submitted the details of the challans. The Adjudicating Authority on perusal of the reply to the notice did not accept the contention of the appellant regarding the interest demand and gave a finding that the interest liability flows from the tax liability automatically and there was no time limit fixed for such demands and hence the contention of the appellant in this regard was rejected. Regarding the second issue of short payment of tax, it was observed that the appellant had filed their returns for the period October 2014 to March 2015 on 09.06.2015 and four out of the ten challans submitted as proof of payment were dated after 09.06.2015. Considering the position, it was found that the payment of tax amounted to Rs.452105/- and interest of Rs.16,755/-, there was yet a balance of Rs.1,51,698/- of tax due from the appellant which has been defaulted for the period January 2015 to March 2015. Further, it was found that the appellant claimed that there was another amount of Rs.130859/- paid in their Cenvat account but no proof was submitted for this. As the appellant had not contended the issue on merits, it was considered that the issue was admitted by them. As the appellant had also not contested against the penalty proposed, the same was imposed in terms of Section 76(1) of the Finance Act, 1994. Order was accordingly passed.

4. Aggrieved, the appellant is on appeal before me (with a request for condonation of delay in filing the appeal) on the grounds:

- That they submit that for the period October 2014 to December 2014, there was a delay in making payment of Service Tax but the appellant had paid all the applicable interest amounts as confirmed in the impugned order and in support they would like to submit copies of the challans evidencing payment of interest and as the entire interest amount was paid, the demand needs to be dropped;
- That they discharged Service Tax liability of Rs.6,03,803/- for the period January 2015 to March 2015 through cash and Cenvat credit; that out of the liability of Rs.6,03,803/-, Rs.4,52,105/- was paid in cash and Rs.1,30,859/- through Cenvat credit; that the details were submitted to the Adjudicating Authority, yet the demand of Rs.1,51,698/- was confirmed stating that the appellant had not submitted any documentary evidence to prove that Cenvat credit was available; that they are enclosing the copies of the invoices on which the credit was availed and therefore the demand to this extent is required to be set aside;
- That with regard to interest and penalties, they submit that when the principal itself was not payable, the interest and penalties are also not payable and the same needs to be set aside;
- That they pray for the impugned order to be set aside and grant relief;

5. The appellant was heard on 11.09.2018 during which, Shri Lakshman Kumar Kadali, Chartered Accountant, the representative for the appellant appeared before me and reiterated the submissions made in the grounds of appeal. They have submitted a letter dated 27.09.2018 stating that out of invoices for an amount of Rs.130859/-, they had already submitted invoices to the extent of Rs.54,644/- along with the appeal memorandum and were enclosing copies of invoices to the extent of Rs.11,829/- along with the submission vide the letter dated 27.09.2018 for perusal; that in the month of March 2015, an agreement entered with a customer got cancelled on which Service Tax was paid as and when advance was received, and the same was taken as credit in the input tax register and adjusted the same against the Service Tax liability instead of adjustments for further periods and that the same may be considered as payment of Service Tax; that they were in the process of collating the invoices for the remaining amount of Rs.18,167/- for which they requested for more time. None appeared for the respondents despite notice.

FINDINGS:

6. I have carefully gone through the facts of the case, the notice issued, the submissions of the appellant and the impugned order against which the appeal is filed before me. The appeal has been filed with a delay of 30 days with a request for condonation on the grounds that the authorized person had resigned without intimating the status of the appeal in the matter and by the time they realized the same and took measures to file the appeal, a delay of 30 days occurred. They request for condonation of the delay and accept the appeal. Considering the submissions, I find that the reason for delay, by 30 days, is within condonable limits and the explanation for the delay is satisfactory to permit the condonation. I accept the cause for delay and condone the delay by the powers vested in me under Section 85(3A) of the Finance Act, 1994 and admit the appeal for decision.

7. The short point to be decided is whether the appellant is liable to pay (i) the demand of interest and (ii) the short paid Service Tax along with interest, which was confirmed by the Adjudicating Authority. The demand of interest was for the belated payment of tax for the period from October 2012 to December 2014. The delay in payment is not in dispute and the appellant has also not contended the same. The averment of the appellant is that as the issue

was raised by the audit, which conducted the audit for the period 2013 – 14 to 2014 – 15, the interest for the said period worked out to Rs.28,576/- only and the demand was not correct. In this regard, I do not find the contentions of the appellant in order for the reason that when liability for payment of tax is admitted for the period 10/2012 to 12/2014 and the tax also paid, interest for delay in payment of the liability during that period, which is statutory, is automatic. The contention of the appellant that the demand is to be restricted to the period of audit is perfunctory as the object of the audit is to find such misdemeanours by sample verification of records during that period and take corrective action and unearth the errors found for a legally tenable period to recover the dues. The contention is therefore rejected. The interest on belated payment being quintessential and compensatory in nature for the belated payment of tax and the delay also having been admitted by the appellant, I do not find any justification for the appellant even to challenge the same. The findings of the Adjudicating Authority in para 8 of the impugned order is therefore upheld and consequently, the para 10(i) of the order is upheld.

8. Regarding the demand of Service Tax short paid along with interest thereon, the contention of the appellant is that part of the demand was paid through cash and the balance was paid through the Cenvat credit account and that they are producing the copies of the Cenvat invoices on which credit was availed and demand to that extent may be set aside. This set of invoices submitted was incomplete and the appellant further submitted copies of invoices on which credit was taken and requested for more time to submit the balance of the copies evidencing credit. This piecemeal submission of the invoices in support of their claim which was not made before the Adjudicating Authority, though irregular and highly unconvincing, cannot be ignored for obvious reasons that the same should not lead to miscarriage of justice. As the Adjudicating Authority did not have the evidences before him, as recorded in para 9(i) of the impugned order, there was no opportunity to verify the claim of the appellant. I am of the considered opinion that the claim of the appellant is required to be taken into consideration to arrive at a decision regarding their claim of payment of the tax through Cenvat credit account. Further the Adjudicating Authority would also be required to undertake verification of the invoices based on which the credit was taken and the eligibility of the same for being availed as credit. Therefore, in the interest of justice, I am of the considered opinion that **the matter is required to be remanded for denovo adjudication particularly in respect of the verification of the payment of tax demand of Rs.6,03,803/- as claimed by the appellant before me and to**

pass a speaking order in this regard. 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. Needless to say, the process of principles of natural justice is required to be followed while arriving at the decision and the appellant is also directed to place before the Adjudicating Authority the evidences required to be produced in their defense when called for. The order in para 10(ii), (iii), (iv), (v) & (vi) are set aside and the notice demanding the short paid tax is restored for denovo adjudication by way of remand as discussed supra. The impugned order is therefore modified to the extent discussed supra.

9. In view of the above, the following order is passed.

ORDER

The impugned order is modified to the extent discussed supra and the appeal disposed by way of part remand.

(बी.वी.वी.टी. प्रसादनायक)
(B.V.V.T PRASAD NAIK)
आयुक्त (अपील–II), हैदराबाद
Commissioner (Appeals–II), Hyderabad

By SPEEDPOST to

1. M/s. Vista Homes, Door No. 5-4-187/3, Soham Mansion, M.G. Road, 2nd Floor, Ranigunj, Hyderabad - 500003 (**Appellant**)
2. Shri. Lakshman Kumar Kadali, Chartered Accountant, C/o M/s. Hiregange & Associates, 4th Floor, West Block, Anushka Pride, Opp. Ratnadeep Supermarket, Road No. 12, Banjara Hills, Hyderabad, Telangana – 500034.

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

Copy to
1. The **Commissioner of GST**, **Secunderabad Commissionerate,** GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad – 500004. [**Jurisdictional Commissioner**]

2.The **Deputy Commissioner of GST**, **Secunderabad GST Division**, **Secunderabad Commissionerate,** "Salike Senate", Door No. 2 – 4 – 416 & 417, Ramgopalpet, M.G. Road, Secunderabad – 500003. [**Jurisdictional Division**]

3. The **Superintendent of GST**, **Ramgopalpet – III Range**, Secunderabad GST Division, "Salike Senate", Door No. 2 – 4 – 416 & 417, Ramgopalpet, M.G. Road, Secunderabad – 500003. [**Respondent**]

4. Master copy.