



आयुक्त (अपील - II) जी एस टी एवं उत्पाद शुल्क का कार्यालय
OFFICE OF THE COMMISSIONER (APPEALS - II) GST & CENTRAL EXCISE
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अपील सं : Appeal No: 08/2018 (SC) ST

अपील आदेश सं : ORDER-IN-APPEAL NO: HYD - EXCUS - SC - AP2 - 0026 - 18 - 19 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 P R E A M B L E

- 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), 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 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 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 निर्धारित के पास पहुँचाने 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 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 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 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 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 Paramount Builders, 5 – 4 – 187/ 3&4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad - 500003 (herein after referred as 'appellant') against Order-in-Original No. 45 / 2016 – Adjn (ST)(ADC) dated 30.12.2016 {in O.R. No. 24/2016 – Adjn(ST)ADC / C. No. IV/16/195/2011- S.Tax (Gr.X)} (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Division – II, Service Tax Commissionerate (presently Assistant Commissioner, Secunderabad Division, Secunderabad GST Commissionerate, Hyderabad) (hereinafter referred to as Adjudicating Authority).

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

- The appellant is engaged in providing Works Contract Services and are a registered partnership firm and are registered with the Department vide registration number AAHFP4040NST001.
- A notice HQPOR No. 87/2010 – Adjn (ST)(ADC) dated 24.06.2010 was issued for the period September 2006 to December 2009 involving an amount of Rs.11,80,439/-.
- Further periodic notices were issued – for the period January 2010 to December 2010 vide notice dated 23.04.2011 demanding an amount of Rs.4,46,403/-, another for the period January 2011 to December 2011 vide notice dated 24.04.2012 demanding an amount of Rs.46,81,850/-, for the period January 2012 to June 2012 demanding an amount of Rs.2,92,477/- and for the period 07/2012 to 03/2014 demanding an amount of Rs.5,20,892/-.
- These notices were issued alleging that the appellant had entered into Sale deed for sale of undivided portion of land together with the semi-finished portion of the flat and thereafter, an agreement for construction with the buyer of the flat. 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'.

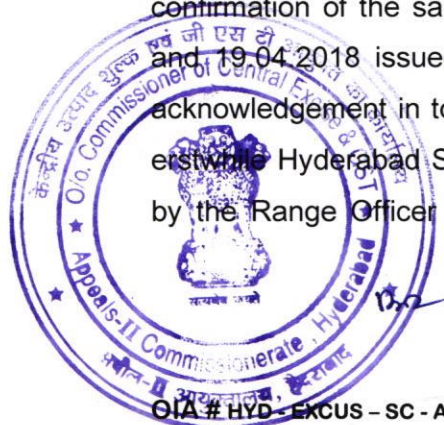
- The present notice was issued for the period 04/2014 to 03/2015 based on the details furnished by the appellant vide letter dated 13.04.2016 and alleging the appellant to have rendered taxable services under the category of Works Contract Services for a taxable value of Rs.43,18,635/- on which the Service Tax due was Rs.1,92,667/-.
- Invoking the provisions of Section 73(1A) of the Finance Act, Section 65B, 66B & 66D and contending that the grounds of the previous notices issued were also applicable to the present case, the status of the service and the corresponding tax liability remaining same, the notice was issued demanding Rs.1,92,667/- on the Works Contract Services rendered; demand of interest was also made and penalties proposed under Section 76 & 77 of the Act.
- The Adjudicating Authority heard the matter and adjudicated the notice, holding inter alia that the appellant was liable to pay tax on Works Contract Services discarding the contentions regarding the validity of the notice, non-taxability of the sale of semi-finished flats and the non-taxability of the other amounts received. Regarding the quantification of the service tax demand, the Adjudicating Authority held that the Department had correctly quantified the duty amount and the appellant's claim was not supported by any data. Penalty was levied under Section 76 & 77 of the Act. The confirmation of the demand culminated in the instant appeal.

3. The appellant contested the demands confirmed in the impugned order, on the following grounds:

- That the impugned order was illegal and untenable in law;
- That the finding at para 11.6 was not correct at all as the appellant had submitted the requisite details inter alia, the detailed statement showing the flat wise details of the booking date, amount received towards the sale deed, additional works, VAT, Registration expenses etc and also submitted the copies of the occupancy certificate; however the impugned order gave a finding that the details / documents were not submitted; that the Adjudicating Authority could have collected the information and nothing prevented him from doing so;
- That they had contended that the provisions of Section 73(1A) of the Act was not applicable in the instant case and cited various explanations but the same were not considered and hence the issue of notice was not valid;
- That ST could not be levied on the sale of immovable property; that the flats were booked after the date of occupancy certificate and the sale deed was executed for the entire value; that they refer to the provision in Section 66E(b) of the Act;
- That they submit that they are liable to discharge Service Tax on construction agreements, thereby accepting Service Tax on the activity as proposed in the SCN (read with previous notices); that the sole allegation of the notice (para 2) is that the construction agreements are subjected to Service Tax under Works Contract Services and no allegation is raised to demand Service Tax on the sale deed value;
- That the statements provided by them made it amply clear that though the allegation was to demand the Service Tax on construction agreements, the quantification was based on gross amounts mentioned for all the activities including the amounts received towards sale deeds;

- That there was an error in quantification of the demand in the notice and was explained through a comparative chart in para 11 of the grounds;
- That once the apparent error was taken to its logical conclusion, the entire demand fails;
- That the finding of the Adjudicating Authority in para 11.4 regarding the appellant's contention that there was no demand on the sale of semi-finished flats was totally out of context and incorrect for the reason that the demand of Service Tax on sale of semi-finished flat runs beyond the scope of the notice; that the Tribunal Stay order dealt with taxability of construction prior to 01.07.2010 and not taxability of semi-finished flat;
- As there was no finding given regarding the taxability of the finished flat (sale deed value), they wish to reiterate the submissions made in the Show Cause Notice reply;
- That sale deed was entered into after the completion of the building, demand cannot be justified under the said entries; that till the stage of entering into a sale deed, the transaction was essentially one of sale of immovable property and therefore excluded from the purview of Service Tax; that in any case, the deeming fiction for construction services prior to completion cannot be classified under Works Contract Services since doing the same would render Section 66E(b) of the FA and the Notification No. 26/2012 ST dated 20.06.2012 redundant; that if at all a view was taken that the value of sale deed was liable to service tax, the benefit of the above Notification should be granted after reclassification of service;
- That there was no Service Tax levy on sale of semi-finished flat as the same is excluded from the definition of service under Section 65B (44);
- That interest and penalties are not imposable / payable; 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 was proposed under Section 77 but the notice has not provided reasons for the applicability of the same; that as the appellant is already registered with the Department and is filing returns, the same is not applicable; that they rely on the decision in the case of Creative Hotels Pvt. Ltd. Vs CCE, Mumbai [2007 (6) STR (Tri Mumbai)] and Jewel Hotels Pvt Ltd [2007 (6) STR 240 (Tri Mum)];
- 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 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 flats sold after the receipt of Occupancy certificate was not subject to Service Tax and wish to rely on the decisions cited 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 and the impugned order has also not given any reason as to why there was no bonafide belief regarding the issue and hence the order needs to be set aside;
- They request for the setting aside of the order and grant consequential relief.

4. I have heard the appellant on 17.04.2018, represented by Shri. P. Venkata Prasad, Chartered Accountant, who reiterated the submissions made in their grounds of appeal and had nothing more to add. None appeared for the respondent despite notice. I find that the appeal has been filed on 08.02.2018 holding that the impugned order was received by them on 03.01.2018. I find that the date of the impugned order is 31.12.2016. Considering the delay in filing the appeal and the contention of the appellant that the date of service of the impugned order was 03.01.2018, letters were addressed to the concerned jurisdictional officers for confirmation of the same. The jurisdictional Divisional Officer, in the letters dated 02.04.2018 and 19.04.2018 issued from C.No.V/04/23/2017-Arrears; confirmed that there was no dated acknowledgement in token of receipt of the impugned order in the case file transmitted by the erstwhile Hyderabad Service Tax Commissionerate; and that the appellant was served a copy by the Range Officer on 03.01.2018 in response to the appellant's letter of the same date,



protesting arrears recovery even when they had not received the OIO. I am therefore satisfied that the date declared at Item Sl.No.4 of Form ST-4 is correct and admit the appeal for a decision on merit.

FINDINGS:

5. I have carefully perused the notice, impugned order and the submissions made by the appellant. The crux of the dispute is the sustainability of the impugned demands, considering the factual matrix and law in vogue during the material period. The disputed issue is periodical in nature, and the material period in the instant case is Apr 2014-Mar 2015.

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 land together with the semi-finished portion of the flat and thereafter, an agreement for construction with the buyer of the flat. The Department viewed that the construction service rendered by the appellant under agreement was taxable service as there existed service provider to service receiver relationship between them and this service was rendered partly before execution of sale deed (semi-constructed flat) and partly after execution of the sale deed against the agreement of construction (finishing) to each of their customers to whom the semi-constructed flat was already sold was taxable under 'Works Contract Service'. This being the case, Service Tax was arrived at in the notice and the demand raised. The primary contention raised by the appellant is that the amounts received after occupancy certificates (OC) were issued by the competent authority cannot be assessed to tax in view of the specific exclusion in Sec 66E(b). I have carefully considered this contention and find that while the notice indeed reproduced the tabulation submitted by the appellant, at Para 4 of the SCN [Page A027 of appeal book], the demand proposal is on the total amount [last column of the table] under 'WCS' category, which is Sec 66E(h) , and not Sec 66E(b). The date of issue of OC is therefore immaterial for a demand under WCS, and the appellant's contention on this aspect is rejected.

7. The appellant submits that the notice issued under Section 73(1A) of the Act was not valid as the law had changed substantially post 01.07.2012 when the negative list based scheme was introduced. They further contended that the Section 65(105) ceased to exist, Section 65A pertaining to classification of service ceased to exist, there was no classification of service, definition of service was introduced under Section 65B (44) containing certain exclusions, new definition of Works Contract Services under Section 65B (90), mega notification 25/2012 – ST, new valuation Rule 2A of the Service Tax (Determination of Value) Rules 2006 for determination of tax liability of Works Contract Services and abatements under Notification 26/2012 – ST, that therefore the allegations in the earlier notices were not applicable for the relevant period and as the impugned order was passed on irrelevant and non-applicable grounds, the same needs to be dropped. I have carefully considered these contentions and find

that the activity of the appellant, Works Contract Services, is also agreed upon by the appellant and the only objection to the notices issued was regarding the valuation of the contract undertaken by him. This being the case, when the changes in the law were effected, the basic definitions of the activities were not changed and remained the same though the liability was governed by the new provisions. As submitted by the appellant themselves, Works Contract Services was defined under Section 65B (90) and abatements provided under Notification referred to. Further the grounds mentioned in the earlier periodical notices were also the same demanding tax on the Works Contract Services provided by the appellant. Therefore, I do not find any infirmity in the notice referring to the allegations in the earlier notices and making the same applicable to the present notice in terms of Section 73(1A) of the Act. On this basis the argument of the appellant in this regard is rejected.

8. 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 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 Adjudicating Authority however, in the findings, proceeding to decide whether the appellant was liable to pay Service Tax on the flats sold by them under Works Contract Services held the notice to be in order disposing of the arguments placed by the appellant but has admittedly not given a clear finding regarding the validity of the inclusion of the sale value of the semi-finished flats being appropriate. It can be inferred from the penultimate row of the Table under Para 4 of the Show Cause Notice [Page A027 of appeal book] that the assessment is made in terms of clause 2(A)(ii)(A) of the Service Tax (Determination of Value) Rules, 2006. The cited Rule 2A underwent a retrospective amendment by Section 129 of the Finance Act, 1994 read with the sixth schedule thereunder. In terms of this retrospective amendment, where the composite contracts include the land value, the assessment under this Rule 2(A) [applicable for the material period in dispute in the instant case] would be in terms of Sl. No. 2 of the Table at Schedule VI of the Finance Act, 2017 since there is no dispute that clause (ii) under Rule 2A is to be applied only after exhausting clause (i) and the same has actually been applied in the instant case.

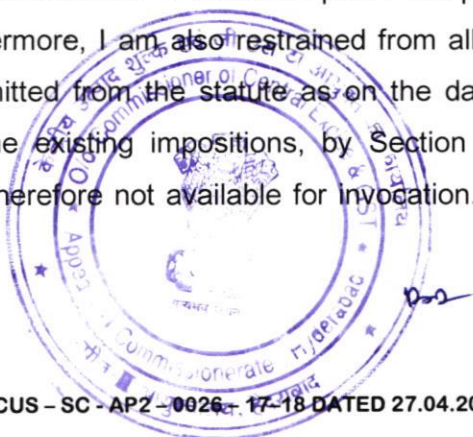
9. The department viewed that the activity carried out by the appellant after the execution of sale deed is taxable under the category of Works contract. Merely because the notice differentiates the activity of the appellant in respect of the sale of the semi-finished flats sold by the appellant and the subsequent activity of Works Contract Services as per the contract agreements; this in itself is insufficient to conclude that the value of semi-finished flats is 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) that is disputed in the instant case. I find that the appellant submitted his calculations, 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.

10. In view of the discussions recorded above, Para 11.8(i) of the ORDER portion is set aside and remanded to the Adjudicating Authority who is directed to:

- (a) Examine the sale deeds to vivisect the land value and the value involved in the semi-constructed flats;
- (b) Aggregate the value of the semi-constructed flat to the gross value of the finishing works contract in the second construction agreement;
- (c) Apply the results of (b) to clause (i) of Rule 2A of the Service Tax (Determination of Value) Rules 2006 to assess the liability
- (d) If the assessment is not possible under clause (i) it shall be done in accordance with clause (ii) after allowing abatement prescribed in the sixth schedule to Finance Act, 2017. After deciding on whether clause (i) or (ii) [under Rule 2A of the ST Valuation Rules] is applicable, at the time of quantification of liability, the lower authority shall consider the appellant's plea that the notice did not consider the Cenvat credit utilization toward payment of tax; and cum-tax benefit shall be extended under Sec 67(2) on the value attributable to the semi finished flat in the sale deed.
- (e) Interest, a quintessential liability accompanying belated payment of tax, is to be computed on such modified tax liability arrived at (c) or (d) supra. **Para 11.8(ii) of the impugned order stands modified accordingly.**

11. The appellant is registered with the Department under the category of works contract service and being aware of the contingencies of law. Post 01.07.2012, there has been no doubt regarding the payment of Service Tax under the category of works contract, and the appellant cannot hide behind the excuse of the disputed issue being under litigation. If the appellant has already paid tax on the activity for which the demand is raised, then the penalty would be in accordance to the short paid / not paid demand quantified based on the remand made. Furthermore, I am also restrained from allowing the benefit of Section 80 as the same has been omitted from the statute as on the date of adjudication, without saving / repeal in respect of the existing impositions, by Section 116 of the Finance Act, 2015. The waiver provision is therefore not available for invocation. The penalty under Sec 76 is specific to non



discharge of tax and does not require allegation of gross violations; and is imposable for the malfeasance where the notice is issued for normal period of limitation. **Para 11.8(iii) of the impugned order stands modified** to the effect that it shall be computed at 10% of tax liability arising in denovo proceedings ordered supra.

12. A penalty of Rs.10,000 has also been imposed under Sec 77 of the FA 1994, which has been contested in the appeal. I find that Para 8(iv) of the Show Cause Notice is vague in making the proposal nor does the impugned order discuss the violations meriting the imposition. When a penalty under Sec 76 squarely covers the malfeasance, there is no call for an imposition under Sec 77 for the same violation. The cited provision has two sub-sections, 77(1) and residuary 77(2). None of the violations listed in Sec 77(1) is alleged in the SCN, and there is no justification for imposition of penalty for a violation which is already covered by Sec 76. There is clearly no justification recorded for taking recourse to the residuary penalty provided under Sec 77(2). The vagueness in proposing penalty has been disapproved in several rulings, particularly SANMAR FOUNDRIES LTD. Versus COMMR. OF C. EX. & CUS., TIRUCHIRAPPALLI [2015 (316) E.L.T. 659 (Mad)], and RAJMAL LAKHICHAND Versus COMMISSIONER OF CUSTOMS, AURANGABAD [2010 (255) E.L.T. 357 (Bom)]. Therefore the penalty imposed under Sec 77 at **Para 11.8(iv) of the impugned order** is legally unsustainable and is **set aside**. In view of the above, the following order is passed.

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



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

By **SPEEDPOST** to

1. **M/s Paramount Builders**, 5 - 4 - 187/ 3&4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad - 500003.

2. **M/s. Hiregange & Associates**, "Basheer Vila", H.No. 8-2-268/1/16/B, 2nd Floor, Sriniketan Colony, Road No. 3, Banjara Hills, Hyderabad - 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.