



केन्द्रीय कर, केन्द्रीय उत्पाद शुल्क एवं सेवा करआयुक्त का कार्यालय  
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX  
सिकंदराबाद जीएसटी आयुक्तालय, जीएसटी भवन , एलबी स्टेडियम रोड,  
SECUNDERABAD GST COMMISSIONERATE, GST BHAWAN, L.B.STADIUM ROAD  
बशीरबाग, हैदराबाद BASHEERBAGH, HYDERABAD - 500 004.  
Email. adjudication3@gmail.com

OR No.29/2019-20-Sec-Adjn-JC (ST)

Date:27.03.2024

**DIN-20240356YO000000BC83**

मूल आदेश संख्या/**ORDER-IN-ORIGINAL No.107/2023-24-Sec-Adjn-ADC(ST)**  
(Passed by Sri B. VIJAY, Additional Commissioner of Central Tax, Central Excise  
and Service Tax, Secunderabad GST Commissionerate)

### **PREAMBLE**

1. यह प्रति उस व्यक्ति के निजी उपयोग के लिए निःशुल्क दी जाती है जिसे यह जारी किया गया है।

This copy is granted free of charge for the private use of the person to whom it is issued.

2. वित्त अधिनियम, 1994 की धारा 85 के तहत, संशोधित के रूप में, इस आदेश से पीड़ित कोई भी व्यक्ति आयुक्त (अपील), मुख्यालय, कार्यालय, 7 वें को इस तरह के आदेश / निर्णय के संचार की तारीख से 60 दिनों के भीतर अपील कर सकता है। मंजिल, एलबी स्टेडियम रोड, बशीरबाग, हैदराबाद - 500 004।

Under Sec.85 of the Finance Act, 1994, as amended, any person aggrieved by this order can prefer an appeal within 60 days from the date of communication of such order/decision to the Commissioner (Appeals), Hqrs., Office, 7th floor, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.

3. इस आदेश के खिलाफ एक अपील आयुक्त (अपील) के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद या जुर्माना है, जहां अकेले दंड विवाद में है।

An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute.

धारा 85 के तहत आयुक्त (अपील) के लिए एक अपील एसटी -4 के रूप में की जाएगी और निर्धारित तरीके से सत्यापित की जाएगी।

An appeal under Sec.85 to the Commissioner (Appeals) shall be made in form ST-4 and shall be verified in the prescribed manner.

4. एस टी & फार्म में की गई अपील अनुलिपि में प्रस्तुत की जानी चाहिए और उसके साथ जिसने निर्णय या आदेश विरुद्ध अपील की जा रही हो। उसकी एक प्रति भी संलग्न की जानी चाहिए।

The form of appeal in Form No: ST-4 shall be filed in duplicate and shall be accompanied by a copy of the decision or the order appealed against.

5. अपील और जिसने निर्णय या आदेश के विरुद्ध अपील की जा रही हो उस आदेश की प्रति पर भी समुचित मूल्य के अदालती टिकट लगाए जाने चाहिए.

The appeal as well as the copy of the decision or order appealed against must be affixed with their fee stamp of the appropriate amount.

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Sub: Service Tax - Offence- Case against M/s Alpine Estates - Non-payment of Service Tax on taxable services rendered- Issuance of Order In Original (Denovo) - Reg.

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#### **BRIEF FACTS OF THE CASE:**

M/s Alpine Estates, #5-4-187/3&4, II Floor, Soham Mansion, MG Road, Secunderabd-500003 (here-in-after referred as "Alpine" or the assessee), are engaged in providing works contract service. M/s Alpine Estates is a registered partnership firm and got themselves registered with the department with Service Tax Registration Number AANFA5250FST001.

2. A Show Cause Notice vide HOPOR No.82/2010-Adjn(ST) dt. 16.06.2010 was issued for the period from January 2009 to December 2009 for an amount of Rs.31,10,377/- including cesses and the same has been adjudicated and confirmed vide Order -in-Original No:44/2010-ST dt. 15.10.2010. Further, the assessee has gone an appeal, and the same has been dismissed vide OIA No. 08/2011(H-II) dt. 31.01.2011 by the Commissioner (Appeal), Hyderabad. Aggrieved from the said Order in Appeal, the assessee had filed an appeal before Hon'ble CESTAT. Hon'ble CESTAT vide Final order No.A/30172-30178/2019 dated 31.01.2019 has set aside the demands raised in the above SCN issued for the period from January, 2009 to December, 2009 holding that service tax is not applicable on sale of flats prior to 01.07.2010. Another two show cause notices were issued vide OR. No. 62/2011-Adjn(ST) Gr.X, dated 23.04.2011 and OR.No.51/2012 - Adjn (Addl. Commr.), dated 24.04.2012 for the period from January, 2010 to December, 2010 and January, 2011 to December, 2011



respectively. The impugned above said both Show Cause Notices are sequel to the same for the period from January, 2010 to December, 2011.

**3. Show Cause Notice OR No.OR. No. 62/2011-Adjn(ST) Gr.X, dated 23.04.2011:** The Show Cause Notice is reproduce hereunder:-

“2. A Show Cause Notice vide HQPOR No. 82/2010-(ST) dt. 16.6.2010 was issued for the period from January 2009 to December 2009 involving an amount of Rs. 31,10,377/- including cess and the same has been adjudicated and confirmed vide Order-In-Original NO:44/2010-ST DT. 15.10.2010. Further, the assessee has gone an appeal and the same has been dismissed vide OIA No.08/2011(H-II) dt.31.1.2011 by the Commissioner (Appeal), Hyderabad. The present notice is issued in sequel to the same for the period from January 2010 to December 2010.

3. As per Section 65 (105) (zzzza) of the Finance Act, 1994 defines that ‘taxable service means any service provided or to be provided – to any person, by any other person, in relation to the execution of a Works Contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams’.

Explanation: For the purposes of this sub-clause, “works contract” means a contract wherein, -

- i. transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- ii. such contract is for the purposes of carrying out,-
  - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise.....,
  - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
  - (c) construction of a new residential complex or a part thereof; or
  - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
  - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.”

3. As per Section 65(91a) of the Finance Act, 1994, “Residential Complex” means any complex comprising of –

- i. a building or buildings, having more than twelve residential units;



- ii. a common area; and
- iii. any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system.

located within the premises and the layout of such premises is approved by an authority under 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.

4. M/s Alpine Estates registered with the service tax department and not discharging the service tax liability properly and not filing the ST-3 returns, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that M/s Alpines Estate have undertaken a single venture by name **M/s Flower Heights** located at Plot No.3-3-27/1, Mallapur Old Village, Uppal Mandal, RR District and received amount from customers towards sale of land and agreement of construction of 102 houses for the said period. Further, it is found that they have not filed ST-3 returns for the said period.

5. Further it is made clear on 01.02.2010 by Sri Shanker Reddy, Deputy General Manager (Admn) authorised representative of the assessee, that the activities undertaken by the company are providing services of construction of residential complexes and also stated that initially, they collected the amounts against booking and also stated that initially, they collected the amounts against booking form/agreement of sale. At the time of registration of the property, the amounts received till then will be allocated towards Sale Deed and Agreements of Construction. Therefore, service tax on amount received against Agreement of Construction portion of the amounts towards agreement of construction is aid on receipt basis. The agreement of sale constitutes the total amount of land/semi-finished flat with undivided share of land and value of construction. The Sale Deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way fo sale of constructed unit as per the agreement of sale but possession was given in two phases one is land/semi-finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks”.



6. As per the exclusion provided in Section 65(91a) of the Service Tax Act, the residential complex 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. Here "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. It is further clarified in para 3 of the Circular No. 108/02/2009-ST dt. 29.01.2009 if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer; who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/ promoter/developer constructs entire complex for one person for personal use as residence by such person would not be subjected to service tax. Further, the builder/promoter/developer normally enters into construction /completion agreement after execution of sale deed, till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self-services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore, there is no levy of service tax on the services rendered till sale deed. i.e. on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements/contract against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105(zzzza)) of the Finance Act 1994.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s Alpine Estates qualifies to be residential complex as it contains more than twelve residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 14014/P4/PLG/H/2006 dt. 23.3.2007. As seen from the records, the assessee entered into 1) a sale deed for a sale of undivided portion of land together with semi-finished portion of the flat and 2) an agreement for



construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assesses thereafter to their customers under agreement of construction are taxable under Service Tax as there exists service provider and receiver relation between them. As there 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 agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under works contract service.

8. M/s Alpine Estates, Hyderabad vide their statement received in this office on 22.4.2011 has submitted the Flat-wise amounts received for the period from January 2010 to December 2010. The total amount received is Rs. 85027011/- against agreements of construction during the period and are liable to pay service tax including cess works out to Rs. 3503113/- and the interest at appropriate rates under Works Contract Service respectively.

9. M/s Alpine Estates, Hyderabad are well aware of the provisions and of liability of service tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly with an intention to evade payment of Service Tax. They have intentionally not filed the ST-3 returns for the said period. Hence, the service tax payable by M/s Alpine Estates appears to be recovered under Sub-Section (1) of Section 73 of the Finance Act 1994.

10. From the foregoing, it appears that M/s Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3 have contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of service tax on the value of the taxable services and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they have not filed statutory returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details/information, with an intent to evade payment of service tax and are liable for recovery under provisions to the Section 73(1) of the Finance Act 1994 and thereby they have rendered themselves liable for penal action under Section 77 & 76 of the Finance Act 1994.



11. Therefore, M/s Alpine Estates, Hyderabad, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad, within 30 days of receipt of this notice as to why:-

- i. An amount of Rs.3503113/- (Rupees Thirty five lakhs three thousand one hundred thirteen only) including cess should not be demanded on the works contract service under the Sub-Section (1) of Section 73 of the Finance Act 1994 for the period from January 2010 to December 2010; and
- ii. Interest is not payable by them on the amount demanded at (i) above under Section 75 of the Finance Act 1994; and
- iii. Penalty should not be imposed on them under Section 77 of the Finance Act 1994; for the contravention of Rules and provisions of the Finance Act 1994; and
- iv. Penalty should not be imposed on them under Section 76 of the Finance Act 1994.

**4. Show Cause Notice OR.No.51/2012- Adjn (Addl.Commr.), dated 24.04.2012:** The Show Cause Notice is reproduced hereunder:

“2. A Show Cause Notice vide HQPOR No.82/2010-Adjn(ST) dt. 16.06.2010 was issued for the period from January 2009 to December 2009 for an amount of Rs.31,10,377/- including cesses and the same has been adjudicated and confirmed vide Order -in-Original No:44/2010-ST dt. 15.10.2010. Further, the assessee has gone an appeal, and the same has been dismissed vide OIA No. 08/2011(H-II) dt. 31.01.2011 by the Commissioner (Appeal), Hyderabad. Another show cause was issued vide OR No.62/2011-2010-Adjn (ST) dt.23.04.2011 for the period from January, 2010 to December, 2010. The present notice is issued in sequel to the same for the period from January 2011 to December 2011.

3. As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of Land together with semi-finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their customers under agreement of construction are taxable under Service Tax as their exists service provider and receiver relationship between them. As there 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 the sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "Works Contract Service".

4. As per Section 65 (105) (zzzza) of the Finance Act, 1994 "taxable service" means any service provided or to be provided - to any person, by any other person, in relation to the execution of a works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation: For the purpose of this sub-clause, "works contract" means a contract wherein, -

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purpose of carrying out,-
  - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise.....,
  - (b) construction of a new building or a civil structure or a part thereof, or a pipeline or conduit, primarily for the purposes of commerce or industry; or
  - (c) construction of a new residential complex or a part thereof; or
  - (d) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

4.1 An optional composition scheme for payment of Service Tax in relation to Works Contract Service is provided by the Notification No.32/2007-ST dated 22-05-2007, effective from 01-06-2007, under the "Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Under the said scheme, an assessee has to pay an amount equivalent to two per cent of the gross amount charged for the Works Contract, excluding the Value Added Tax (VAT) or Sales Tax paid on transfer of property of goods involved in the execution of Works Contract. W.e.f. 1-3-2008 onwards, the said rate of 2% is changed to 4% vide Notification No.7/2008-S.T. dated 1-3-2008.

5 M/s Alpine, Hyderabad vide their statement received in this office on 07.02.2012 has informed that they received an amount of Rs. 11,73,17,845/- for the period from January 2011 to December 2011. The total consideration received by them for the period is Rs. 11,73,17,845/- during the period and are liable to pay service tax including cess on the same works out to Rs. 48,33,495/-. The assessee further submitted that



they have paid service tax of Rs. 21,95,524/- (Rs.745524 Dt. 7.6.2011 and RS. 14,50,000/- Dt. 09.02.2012) under protest.

6. M/s Alpine registered with the service tax department and not discharging the service tax liability properly and also not filing the ST-3 returns, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that M/s Alpine Estate have undertaken a single venture name M/s Flower Heights located at Plot No. 3-3-27/1, Mallapur Old Village, Uppal Mandal, RR District and received amount from customers towards sale of land and agreement of construction of 102 houses.

7. M/s Alpine, are well aware of the provisions and liability of Service Tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly. They have not filed the ST-3 returns for the period up to 03/2011. Hence, the service tax payable by M/s Alpine, appears to be recovered under Sub-Section (1) of Section 73 of the Finance Act 1994.

8. From the foregoing, it appears that M/s Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3 have contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of Service Tax on the value of the taxable services and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they have not filed statutory returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details/information. Hence the Service is liable for recovery under provisions of Section 73(1) of the Finance Act 1994 and they have rendered themselves liable for penal action under Section 76 of the Finance Act 1994 and Section 77 of the Finance Act 1994. They are also liable for Interest under Section 75 of the Finance Act, 1994.

9. Therefore, M/s Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad, Hyderabad are hereby required to show cause to the Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, 11-5-423/1/A, Sitaram Prasad Towers, Red Hills, Bazarghat Road, Hyderabad, within 30 (thirty) days of receipt of this notice as to why:-



- i. an amount of Rs. 48,33,495/- (Rupees Forty Eight Lakhs Thirty Three Thousand Four Hundred Ninety Five only) including cess should not be demanded on the “Works Contract Service” under the Sub-Section (1) of Section 73 of the Finance Act, 1994 for the period from January 2011 to December 2011. An amount of Rs.21,95,524/- (Rs.745524 Dt. 7.6.2011 and Rs.14,50,000/- Dt. 09.02.2012) by them should not be adjusted against the demand discussed supra: and
- ii. Interest is not payable by them on the amount demanded as (i) above under Section 75 of the Finance Act 1994; and
- iii. Penalty should not be imposed on them under Section 77 of the Finance Act 1994 for the contravention of Rules and provisions of the Finance Act 1994; and
- iv. Penalty should not be imposed on them under Section 76 of the Finance Act 1994.”

**5** The above said both Show Cause Notices were adjudicated vide Order in Original No.49/2012-Adjnc(ST)ADC, dated 31.08.2012 and the entire demands proposed in the notices were confirmed. The assessee had filed an appeal before Commissioner (Appeal) against the said order. The Commissioner (Appeals) vide Order-in-Appeal No.38/2013 (H-II) S. Tax dated 27.02.2013 upheld the OIO but remanded the matter for re-quantification. To the extent aggrieved by Order in Appeal, the assessee filed an appeal before Hon’ble CESTAT, Hyderabad. The Hon’ble CESTAT has set aside the demand raised for the period prior to 01.07.2010 and set aside the demand raised on registration fees, VAT etc for the period from 01.07.2010 vide its Final Order No.ST/30699/2019 dated 19.06.2019. With respect to the demand for the period July, 2010 to December, 2011, the Hon’ble CESTAT had remanded the matter to the original authority for denovo adjudication only to the limited extent to check whether the Show Cause Notice has given deduction towards sale deed value or not. If the deduction is not given, directed the adjudication authority to pass the denovo order after giving the deduction. To clear the doubt as to whether the direction in the Final Order is for reconsideration as to whether the sale deed value is also subject to service tax, the assessee had filed a rectification of mistake application against the above referred Final Order and a clear findings has been provided by the CESTAT, Hyderabad, vide the Misc. Order No.M/30226/2022 dated 11.03.2022. Vide this Final Order, Hon’ble



CESTAT has cleared that the demand on registration fees, VAT etc are set aside for the period from 01.07.2010.

**6 Personal Hearings and Submissions made by the assessee:**

**6.1** A personal hearing was fixed on 26.11.2019, 19.06.2020, 20.10.2020, 16.11.2020, 10.12.2020, 20.02.2023 and 08.12.2023. On behalf of the assessee, Sri Venkata Prasad P, CA, Hiregange & Associates had attended personal hearing on 11.12.2020, 20.07.2021 and 20.02.2023.

**6.2** The assessee made their submissions vide letter dated 20.10.2020, 18.12.2020, 18.02.2021 and 21.03.2023.

**6.2.1** The assessee's submission dated 18.02.2021: The relevant portion of the submission is reproduced hereunder:

"2. Further, during the course of personal hearing on 11.12.2020, your good self has asked us to submit the sample copies of customer ledgers, sale deeds and receipt wise statement for the period January 2010 to December 2011. In this regard, we are herewith submitting the following

- a. Sample copies of sale deeds along with ledger accounts of customers for the period January 2010 to December 2011
- b. Receipt wise statement for the period January 2010 to December 2011

3 In this regard, we would like to submit that the details of stamp duty and VAT paid was clearly mentioned on the sale deed by the Sub-registrar office which can be considered while passing the order. Further, the details of other reimbursements can be evidenced from the customer ledger accounts. Hence, we request you to drop the demand to that extent."

**6.2.2** The assessee's submission dated 21.03.2023: The assessee's submission is reproduced hereunder:

**Brief facts:**

- A. Noticee is engaged in sale of residential houses in venture by name "Flower Heights" to prospective buyers while the units are under construction by entering into following agreements
- Sale Deed for sale of undivided portion of land together with semi-finished flat. Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same.



➤ Construction agreement for undertaking construction

B. Department has initially issued a Show Cause Notice dated 16.06.2010 covering the period January 2009 to December 2009 ("First SCN") proposing to demand service tax on amounts received towards construction agreement. The Hon'ble CESTAT vide Final order No. A/30172-30178/2019 dated 31.01.2019 set aside the demands raised in the above SCN holding that service tax is not applicable on sale of flats prior to 01.07.2010.

C. The above Show Cause Notice was followed by below periodical notices under Section 73(1A) for the period January 2010 to December 2011 which are in dispute in the Final Order No.ST/30699/2019 dated 19.06.2019

| <b>SCN reference</b>                               | <b>Time period</b>   | <b>Proposed Demand</b> |
|----------------------------------------------------|----------------------|------------------------|
| SCN No. 62/2011-Adjn (S.T.) Gr.X dated 23.04.2011  | Jan 2010 to Dec 2010 | Rs.35,03,113/-         |
| SCN No. 52/2012-Adjn (Addl.Commr) dated 24.04.2012 | Jan 2011 to Dec 2011 | Rs.48,33,495/-         |
| <b>Total</b>                                       |                      | <b>Rs.83,36,608/-</b>  |

D. The above referred SCN's were adjudicated vide a common Order-in-Original No.49/2012-Adjn ST ADC dated 31.08.2012 wherein vide Para 17 it was accepted that service tax would not be demanded on sale deed value however OIO dated 31.08.2012 had included the amounts received towards Sale deeds also.

E. Noticee has filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide Order-in-Appeal No.38/2013 (H-II) S. Tax dated 27.02.2013 upheld the OIO but remanded the matter for re-quantification.

F. To the extent aggrieved by Order-in-Appeal, the Noticee has filed appeal before Hon'ble CESTAT, Hyderabad. The Hon'ble CESTAT, Hyderabad has heard the matter and set aside the demand for the period January 2010 to June 2010 and set aside the demand raised on registration fees, VAT etc for the period January 2010 to December 2011. With respect to demand for the period July 2010 to December 2011, the Hon'ble CESTAT had remanded the matter to the original authority for denovo adjudication only to the limited extent to check whether the Show Cause Notice has given deduction towards sale deed value or not. If the deduction is not given, directed the adjudicating authority to pass the denovo order after giving the deduction.



G. Noticee has filed an Rectification of Mistake Application against the above referred Final Order and the same is pending for disposal.  
H. The Noticee is herewith making following submissions for *denovo* adjudication.

**Submissions for the Denovo adjudication:**

1. Noticee at the outset submits that the Noticee has filed the Rectification of Mistake Application against the Final Order No. ST/30699/2019 dated 19.06.2019 and the same is pending before the CESTAT. As the issue is pending before Hon'ble Tribunal and matter is *sub-judice*, Noticee humbly requests Ld. Adjudicating authority to keep the proceedings in abeyance till the disposal of Rectification of Mistake Application by Hon'ble CESTAT, Hyderabad. In this regard, reliance is placed on

a. Vilsons Roofing Products Pvt Ltd Vs CCE, Kolhapur 2013-TIOL-2023-CESTAT-MUM wherein it was held that "4. Brief facts of the case are that the appellants filed a refund claim before the adjudicating authority which was sanctioned and the refund was given to the appellants. Against the said order, the Revenue preferred an appeal before the Commissioner (Appeals) who set aside the order of sanctioning the refund claim and remanded the matter back to the adjudicating authority for reconsideration. The said order was challenged by the appellants before the Tribunal on the ground that the Commissioner (Appeals) has no power to remand the matter to the adjudicating authority and obtained stay from the Tribunal. While the matter is pending before the Tribunal, the adjudicating authority, on the matter on remand by the Commissioner (Appeals), has rejected the refund claim of the appellants. On appeal before the Commissioner (Appeals) the rejection was upheld. Aggrieved by the said order the appellants are before me.

5. When the issue before this Tribunal is sub judice therefore, the remand proceeding was not warranted. Hence, the impugned order passed by the adjudicating authority has no legal sanctity. Accordingly, the impugned order is set aside and the appeals are allowed. The stay applications are also disposed of in the above terms."

- b. Agro Tech Foods Pvt Ltd Vs CC(I), Nhavasheva 2017 (345) ELT 668 (Tri-Mum)
- c. Fiberfill Engineers Vs CCE, Delhi 2016 (332) ELT 478 (Del)
- d. P K International Vs CCE, Thane-II 2014 (301) ELT 3 (Bom)
- e. CC, Uttar Pradesh Vs Pidilite Industries Limited 2014 (309) ELT 598 (All)



2. Without prejudice to above, As stated in the background facts, the Hon'ble CESTAT vide Para 7 of the Final Order No. ST/30699/2019 dated 19.06.2019 set aside the demand prior to 01.07.2010 and remanded the matter to the adjudication authority for reconsideration to verify the quantification of the demand for the period July 2010 to December 2011. Further, Noticee submits that the Hon'ble CESTAT vide Para 4 and 5 held as follows

*"4. Heard both sides. The finding of Commissioner in Para 17 is reproduced as under*

*'various flats have been sold by them to various customers in two states. First, they have executed a 'sale deed' at semi-finished stage by which the ownership of the semi-finished flats was transferred to the customers. Appropriate stamp duty was paid on the sale deed. No Service tax been demanded on the sale deed value in the light of Board's Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"*

*"5. After hearing the submissions of the learned A.R we are of the view that the matter requires to be reconsidered as to whether the amounts included in the sale deed value of immovable property would be subject to levy of service tax under construction services. The computation in the Order-in-Original has to be looked into on the basis of the sale deed executed by the Noticee with customer which includes the semi-finished flat. Other charges like registration fees, VAT, etc needless to say will not be subject to service tax as being reimbursable."*

3. Noticee submits that on combined reading of Para 5 and 7 of the Final Order, it is clear that the entire demand on amounts received towards Construction Agreement and Sale deed has been set aside for the period January 2010 to June 2010 and the demand on registration fees, VAT etc are set aside for the entire period i.e, January 2010 to December 2011. Therefore, demand to that extent needs to be reduced.

4. With respect to demand on sale deed values for the period July 2010 to December 2010, Noticee submits that the Hon'ble CESTAT has remanded the matter to lower authority to check whether the deduction was actually given for the sale deed values as stated in Para 7 of SCN No. 62/2011-Adjn (ST) Gr.X dated 23.04.2011 and SCN No.52/2012-Adjn (Addl Commr) dated 24.04.2012, Para 17 of OIO No. 49/2012-Adjn-ST ADC dated 31.08.2012



5. The Show Cause Notice dated 23.04.2011 vide Para 7 and Show cause notice dated 24.04.2012 vide Para 3 alleged that

*“As there 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”.*

As seen from the operative part of SCN, the sole allegation of SCN is that the amounts received towards construction agreements are subject to service tax under the category of “Works Contract”.

6. The same was confirmed by the OIO vide Para no. 17 as follows “No Service tax been demanded on the sale deed value in the light of Board’s Circular dated 29.01.2009. After execution of sale deed, they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement”

7. However, while quantifying the demand, the SCN and OIO has included the value of sale deeds and other reimbursements such as VAT, registration charges etc though the same was never the allegation in the SCN.

8. It is therefore apparent that the SCN represents an error in quantification of the demand. Once the same is rectified, there is no short payment of service tax. The details of amounts received towards construction agreement, sale deed value, VAT, registration etc are as follows:

| Particulars                                                            | Jan 2010 to Dec 2010 | Jan 2011 to Dec 2011 |
|------------------------------------------------------------------------|----------------------|----------------------|
| Gross receipts                                                         | 11,45,70,426         | 11,82,85,406         |
| <b>Less: Amounts received for the period January 2010 to June 2010</b> | 5,51,27,612          | Not Applicable       |
| Amount received during the period July 2010 to December 2010           | 5,94,42,814          | Not Applicable       |
| <b>Less: Sale Deed value</b>                                           | 3,07,28,504          | 5,46,49,500          |
| <b>Less: VAT, Registration Charges and other non-taxable receipts</b>  | 68,73,952            | 82,09,816            |
| <b>Taxable Value</b>                                                   | 2,18,40,358          | 5,54,26,090          |
| ST Liability @4.12%                                                    |                      |                      |



|                                  |          |                    |
|----------------------------------|----------|--------------------|
|                                  | 8,99,823 | 22,83,555          |
| <b>Total Service tax payable</b> |          | <b>31,83,378</b>   |
| <b>Service Tax paid</b>          |          | <b>42,05,398</b>   |
| <b>Payable/(Excess paid)</b>     |          | <b>(10,22,020)</b> |

The detailed statement showing the flat wise calculations would be submitted. It is humbly requested Ld. Adjudicating authority to inform any further documents required for verification of the above calculations.

As seen from the above table, an amount of Rs. 42,05,398/- has already paid towards service tax on the amounts received from customers against the liability of Rs. 31,83,378/- resulting in excess payment of Rs.10,22,020/-. Since Noticee has discharged the appropriate Service tax (even excess amount), the demand needs to be dropped.

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

Construction of Residential complex for "Personal Use" is excluded from definition of Residential Complex

10. Without prejudice to the foregoing, assuming but not admitting the same is covered under the tax net. The term "Construction of Complex" is defined under section 65 (30a) as under

*(30a) "construction of complex" means —*

- (a) construction of a new residential complex or a part thereof;*
- (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*

11. Noticee submits that the construction service of the semi-finished flat is provided for the owner of the semi-finished flat/customer, who in turn used such flat for his personal use therefore the same is excluded from the definition of 'construction of complex service'.



12. The Noticee submits that it has been specifically clarified vide board Circular No. 108/2/2009-S.T., dated 29-1-2009 that the construction for personal use of the customer falls within the ambit of exclusion portion of the definition of the “residential complex” as defined u/s 65(91a) of the Finance Act, 1994 and accordingly no service tax is payable on such transaction.

Relevant extract

***“...Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of ‘residential complex’...”***

13. Noticee submits that issue of payment of service tax on agreements entered with individuals for completion of the semifinished houses who in turn used such flat for personal use is *no more res integra* in view of the **Jurisdictional CESTAT decision in case of**

a. **Modi & Modi Constructions Vs CCE, Hyderabad-II 2019**

**(10) TMI 171 -CESTAT Hyderabad** wherein it was held that “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 Noticee 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 Noticee 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.”*

b. Modi Ventures Vs Commissioner of Central Tax, Hyderabad in Final Order No.30882/2020 dated 03.03.2020

14. Noticee submits that from the above referred decision, it is clear that there is no liability to pay service tax on the amounts received during the period July 2010 to December 2011. Thereby, the entire demand proposed in the impugned Show Cause Notices needs to be dropped.

15. Without prejudice to above, Noticee submits that sale deed is executed for semi-finished flat represents the construction work already done prior to booking of flat by the prospective buyer. The work undertaken till that time of booking flat is nothing, but work done for self as there is no service provider and receiver. It is settled law that there is no levy of service tax on the self-service and further to be a works contract, there should be a contract and any work done prior to entering of such contracts cannot be bought into the realm of works contract. In this regard, reliance is placed on the following:

a. Apex court judgment in Larsen and Toubro Limited v. State of Karnataka — 2014 (34) S.T.R. 481 (S.C.) wherein it was held that

**“115. It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government.”**

b. CHD Developers Ltd vs State of Haryana and others, 2015 –TIOI-1521-HC – P&H-VAT wherein it was held that “45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which



*VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property.”*

16. It is further submitted that to be covered under the definition of works contract, one of the vital conditions is that there should be transfer of property in goods leviable for sales tax/VAT. Undisputedly sale of undivided portion of land along with semi finished flat is not chargeable to VAT and it is mere sale of immovable property (same was supported by above cited judgments also). Therefore said sale cannot be considered as works contract and consequently no service tax is liable to be paid. All the goods till the prospective customer become owner have been self consumed and not transferred to anybody. Further goods, being used in the construction of semi-finished flat, have lost its identity and been converted into immovable property which cannot be considered as goods therefore the liability to pay service under ‘works contract service’ on the portion of semi-constructed villa represented by ‘sale deed’ would not arise.

Interest and penalties are not imposable

17. Noticee submits that when service tax itself is not payable, the question of interest does not arise. Noticee further submits that it is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC)
18. Noticee submits that imposition of penalty cannot be merely an automatic consequence of failure to pay duty hence the penalty requires to be dropped.
19. Noticee submits that they are under bonafide belief that the amounts received towards sale deeds are not subjected to service tax. It settled position of the law that if the Noticee is under bonafide belief as regards to non taxability imposition of the penalties are not warranted. In this regards wishes to rely on the following judicial pronouncements.
- a. Padmini Products v. Collector —1989 (43) E.L.T. 195 (S.C.)
  - b. Commissioner v. Surat Textiles Mills Ltd. — 2004 (167) E.L.T. 379 (S.C.)



20. Without prejudice to the foregoing, Noticee submits that the SCN/OIO has not explained the reason for imposition of penalties under Section 76 and 77 of the Finance Act, 1994. As the subject show cause notice has not considered these essential aspects, the proposition of levying penalty under section 76 and 77 is not sustainable and requires to be set aside.
21. Noticee submits that issue involves interpretation and the periodical notices has been issued to the Noticee, the imposition of penalties under Section 76 is not tenable and the same needs to be set aside. In this regard, Noticee relied on M/s. Phoenix IT Solutions Ltd Vs CCE 2017 (52) STR 182 (Tri-Hyd).
22. Further, there is bona fide litigation is going on and issue was also debatable which itself can be considered as reasonable cause for failure to pay service tax. Accordingly, waiver of penalty under section 80 of Finance Act, 1994 can be made. In this regard reliance is placed on C.C.E., &Cus., Daman v. PSL Corrosion Control Services Ltd 2011 (23) S.T.R. 116 (Guj.);
23. Noticee craves leave to alter, add to and/or amend the aforesaid grounds.

#### **DISCUSSION AND FINDINGS:**

7. I have carefully gone through the impugned Show Cause Notices dated 23.04.2011 & 24.04.2012, Order in Original No.49/2012-Adjn ST ADC dated 31.08.2012, Order in Appeal No. 38/2013 (H-II) S.Tax dated 27.02.2013, Hon'ble CESTAT's Final Order No.ST/30699/2019 dated 19.06.2019, Hon'ble CESTAT's Rectification of Mistake Order No.M/30226/2022 dated 11.03.2022, submissions made by the assessee, oral submissions made by the assessee during personal hearings, and records available in the file.

8. **Brief of the case:** A Show Cause Notice vide HQPOR No.82/2010-Adjn(ST) dt. 16.06.2010 was issued for the period from January 2009 to December 2009 for an amount of Rs.31,10,377/- including cesses and the same has been adjudicated and confirmed vide Order -in-Original No:44/2010-ST dt. 15.10.2010. Further, the assessee has filed an appeal, and the same has been dismissed vide OIA No. 08/2011(H-II) dt. 31.01.2011



by the Commissioner (Appeal), Hyderabad. Aggrieved from the said Order in Appeal, the assessee had filed an appeal before Hon'ble CESTAT. Hon'ble CESTAT vide Final order No.A/30172-30178/2019 dated 31.01.2019 has set aside the demands raised in the above SCN issued for the period from January, 2009 to December, 2009 holding that service tax is not applicable on sale of flats prior to 01.07.2010. Further, two periodical Show Cause Notices were issued vide OR. No. 62/2011-Adjn(ST) Gr.X, dated 23.04.2011 for the period from January, 2010 to December, 2010 and OR.No.51/2012 - Adjn (Addl. Commr.), dated 24.04.2012 for the period from January, 2011 to December, 2011, and demanded service tax of Rs.35,03,113/- and 48,33,495/- respectively. The impugned above said both Show Cause Notices are sequel to the same for the period from January, 2010 to December, 2011. Both Show Cause Notices issued covering period from January, 2010 to December, 2011 were adjudicated vide OIO No.49/2012-Adjn (ST) ADC, dated 31.08.2012 and the entire demand proposed in the both periodical notices was confirmed. The assessee filed an appeal before Commissioner (Appeal) against the said order. The Commissioner (Appeals) vide Order-in-Appeal No.38/2013 (H-II) S. Tax dated 27.02.2013 upheld the OIO but remanded the matter for re-quantification. To the extent aggrieved by Order in Appeal, the assessee filed an appeal before Hon'ble CESTAT, Hyderabad.

**9.** The case is remanded back to the original adjudication authority for *denovo* proceedings by Hon'ble CESTAT, Hyderabad. I would like to reproduce the judgement made by the Hon'ble CESTAT vide its Final Order No.ST/30699/2019 dated 19.06.2019 and Rectification of Mistake Order No.M/30226/2022 dated 11.03.2022, first.

**Final Order No.ST/30699/2019 dated 19.06.2019:**

*Brief facts are that appellants were issued show-cause notice proposing to demand short-paid service tax under works contract service.*

*2. Learned consultant Shri Sudhir V.S. appearing on behalf of the appellant submitted that the appellants were engaged in construction of residential complexes. During the disputed period, they had entered into two separate agreements with the customers. Firstly, the appellant would execute the sale-*



deed for sale of undivided portion of land together with semi-finished portion of the flat. Thereafter an agreement for construction was entered for completion of construction of the flat. The appellant has discharged the entire service tax liability as per the agreement of construction. The present show-cause notice is issued including the value shown in the sale-deed and also other reimbursable charges in the nature of registration fee etc. It is submitted by him that though the jurisdictional authority has made a categorical finding in para 17 of the impugned order that no service tax has been demanded on the sale-deed value in the light of the Board Circular dated 29.01.2009, at the time of confirmation of demand the said value as per the sale-deed also has been included. He therefore requested that the matter may be remanded so as to requantify the amount after giving the deductions as per the show-cause notice in respect of value shown in sale-deed as well as other reimbursable expenses such as VAT, registration fee etc.

3. Learned A.R. Shri B. Natesh appeared on behalf of the department and argued the matter. He adverted to the amendment brought forth in the definition of residential complex service with effect from 01.07.2010 to argue that whenever an advance is received by the assessee prior to issuance of the completion certificate, the said amount would be taxable and therefore in the present case, the amount in the sale-deed for the period post 01.07.2010 would be taxable. The amount shown in the sale-deed has been rightly subjected to levy of service tax and confirmed by the original authority.

4. Heard both sides. The finding of the Commissioner in para 17 is reproduced as under:-

*“various flats have been sold by them to various customers in two states. First, they have executed a ‘sale deed’ at semi-finished stage by which the ownership of the semi-finished flats was transferred to the customers. Appropriate stamp duty was paid on sale deed value. No service tax been demanded on the sale deed value in the light of Board’s Circular dated 29.01.2009. After execution of sale deed they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement”*

5. After hearing the submissions of learned A.R. we are of the view that the matter requires to be reconsidered as to whether the amounts included in the sale-deed value of immovable property would be subject to levy of service tax under construction services. The computation in the order-in original has to be looked into on the basis of the sale-deed executed by the appellant with customer which includes the semi-finished flat. Other charges like registration



fee, VAT, etc. needless to say will not be subject to service tax as being reimbursable expenses.

6. For the period prior to 01.07.2010, the learned consultant submitted that in the appellant's own case for the earlier period, the Tribunal as reported in 2019 (2) TMI 772 (CESTAT-Hyd) had held as under:-

“5. On careful consideration of the submissions made by both sides, we find that the facts are not much in dispute and the demand is further period January, 2009 to December, 2009 in some cases June, 2007 to December, 2009 in some cases and June, 2005 to February, 2007 in some cases and in some cases June, 2005 to March, 2008. All these demands are in respect of the service tax liability on the builders for the services provided before 01.07.2010. The self same issue was considered by the Bench in detailed in the case of M/s Mehta & Modi Homes and as also in the case of M/s Kolla Developers & Builders and held that prior to 01.07.2010 service tax liability will not arise on the builders. We do not find any reason to deviate from such a view already taken on the issue. Accordingly, we hold that all the impugned orders are unsustainable and liable to be set aside and we do so. The impugned orders are set aside and the appeals are allowed with consequential reliefs, if any.”

7. From the above, we hold that the impugned order is modified to the extent of setting aside the demand prior to 01.07.2010 and remanding the matter after 01.07.2010 to the adjudicating authority for reconsideration. The adjudicating authority in such remand proceedings shall also reconsider the issue of penalty. Appeal is partly allowed and partly remanded in above terms, with consequential relief if any.

**Hon'ble CESTAT's Rectification of Mistake Order No.M/30226/2022 dated 11.03.2022:**

1. This application has been filed by the applicant under Section 35C of the Central Excise Act seeking rectification of alleged mistakes in the Final Order No. A/30699/2019 dated 19.06.2019 by which the matter was remanded for de novo adjudication. Paragraph 5 of the Final Order dated 19.06.2019 reads as follows:

“5. After hearing the submissions of learned A.R. we are of the view that the matter requires to be reconsidered as to whether the amounts included in the sale-deed value of immovable property would be subject to levy of service tax under construction services. The computation in the order-in-original has to be looked into on the basis of the sale-deed



*executed by the appellant with customer which includes the semi-finished flat. Other charges like registration fee, VAT, etc. needless to say will not be subject to service tax as being reimbursable expenses.”*

2. According to the applicant, it appears from the above paragraph of the order that the matter was remanded for reconsideration as to whether the amounts included in the sale deed value would be subject to levy of service tax under construction services. It is submitted that the above referred paragraph does not reflect the decision in the open Court and is an apparent mistake in the face of record which needs to be rectified.

3. Learned Chartered Accountant for the appellant submits that in paragraph 7 of SCN (Show Cause Notice) dated 23.04.2011 and paragraph 3 of the impugned order dated 24.04.2012, it was alleged that the amounts received by the appellant towards construction under the agreements after executing the sale deeds are chargeable to Service Tax. However, while quantifying the demand, the SCN and the Order-in-Original had erroneously included the value of sale deeds and the reimbursements such as VAT, registration charges, etc., as the same was not part of the allegation in the SCN. He submits that after the matter was remanded by the Tribunal in its Final Order, the learned adjudicating authority has expressed a doubt as to whether the direction in the Final Order is for reconsideration as to whether the sale deed value is also subject to service tax. Learned Chartered Accountant therefore, prays that the Final Order may be modified.

4. We have gone through the application for rectification of mistake and have perused the Final Order. We do not feel there is any error apparent on record. The Final Order must be read as a whole. The direction in the Final Order was neither to go beyond the scope of the SCN nor to consider levying service tax on sale deed value of immovable property. If the Final Order is read as a whole, it would be clear that the matter has been remanded for the purpose of computing the demand of service tax after 01.07.2010 and also reconsidering the penalty for this period and NOT to consider levying/charging Service Tax on value of sale of the property. The demand for the period prior to 01.07.2010 has already been set aside in the Final Order. Paragraph 17 of the impugned order of the Commissioner also indicates that the demand was only in respect of the service contract entered into after the sale deed has been executed and not on the sale value of the immovable property. This was also reproduced in paragraph 4 of the Final Order.

5. In view of the above, we find that there is neither any error apparent on record nor is there any direction to the Commissioner in the Final Order to go beyond the scope of SCN and demand service tax on the value of transfer of



*immovable property. The appeal was partly allowed up to 01.07.2010 and partly remanded for the period after 01.07.2010 for reconsideration of both the demand and the penalty. The application for rectification of mistake is accordingly dismissed.*

From the above extract of Hon'ble CESTAT's orders, it evident that the Hon'ble CESATE has set aside the demand raised in the notice for the period from January, 2010 to June, 2010. With regard to Value of sale deed and other charges like registration fee, VAT, etc., Hon'ble CESTAT ordered not to consider levying of service tax on these value for the period from July, 2010 to December, 2011 and reminded back the case to the original adjudicating authority for denovo proceedings.

**10.** In light of the above, I drop the demand proposed in the notices for the period from January, 2010 to June, 2010. And, I proceed for denovo proceeding for demand of tax for the period from July, 2010 to December, 2011. Considering the Hon'ble CESTAT's Order, the calculation of Service Tax liability basing on ledger details submitted by M/s Alpine Estates is as under:

| <b>Period</b>                         | <b>Amount</b> | <b>Service Tax @ 4.12% on Works Contract Services</b> |
|---------------------------------------|---------------|-------------------------------------------------------|
| <b>Sale Deed Value</b>                |               |                                                       |
| July, 2010 to December, 2010          | 3,07,28,504   | Not taxable                                           |
| January, 2011 to December, 2011       | 5,46,49,500   | Not taxable                                           |
| <b>Construction Agreement Value</b>   |               |                                                       |
| July, 2010 to December, 2010          | 2,15,58,925   | 8,88,228                                              |
| January, 2011 to December, 2011       | 5,52,74,294   | 22,77,300                                             |
| <b>Other Taxable Receipts</b>         |               |                                                       |
| July, 2010 to December, 2010          | 2,81,431      | 11,595                                                |
| January, 2011 to December, 2011       | 1,51,796      | 6,254                                                 |
| <b>VAT, Registration Charges, etc</b> |               |                                                       |



|                                                     |           |             |
|-----------------------------------------------------|-----------|-------------|
| July, 2010 to December, 2010                        | 40,32,173 | Not taxable |
| January, 2011 to December, 2011                     | 66,20,485 | Not taxable |
| <b>Other non taxable receipts (Electricity etc)</b> |           |             |
| July, 2010 to December, 2010                        | 28,41,781 | Not taxable |
| January, 2011 to December, 2011                     | 15,89,331 | Not taxable |

As arrived in the above table, the assessee is liable to pay service tax Rs.8,99,823/- for the period from July, 2010 to December, 2010 and Rs.22,83,554/- for the period January, 2011 to December, 2011, totaling to Rs.31,83,377/-.

**11.** Further the assessee submitted that they have paid service tax of Rs.42,05,398/- and it can be seen from the ST-3 returns where no service tax was paid for the period January, 2010 to June, 2010. Evidencing their claim the assessee submitted challans and ST-3 Returns for the period 2010-11. On examination of these documents and submission made by the assessee I find followings:

| <b>Submission made by the assessee</b>            |                     |                                                                                                                        | <b>My findings</b>                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Cheque/Pay order No.</b>                       | <b>Amount (Rs.)</b> | <b>Remarks</b>                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 267251 dated 10.06.2011 & 435410 dated 13.02.2012 | 21,95,524           | Paid through Cash                                                                                                      | The amount and challans details is not mentioned in the ST-3 returns submitted by them for 2010-11. And also, the assessee have not submitted any other documentary evidences to prove that this payment is paid towards the demand raised for the period July, 2010 to December, 2011. Further, it is seen from the both challans that total amount of both challans is Rs.21,95,398/-, not Rs. Rs.21,95,524/-. |
| ST-3 Returns                                      | 36,958              | Paid through CENVAT                                                                                                    | As seen from ST-3 returns for the period 2010-11, the CENVAT Credit is not availed/utilized by the assessee.                                                                                                                                                                                                                                                                                                     |
| 922747 dated 13.01.2013                           | 19,72,916           | Paid in consequent to order in Stay Petition No.63/2012 (H-II) S. Tax dated 07.12.2012 before Commissioner (Appeal-II) | The assessee have not submitted any evidence in this regard.                                                                                                                                                                                                                                                                                                                                                     |
|                                                   | 42,05,398           |                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                  |



In view of the findings as tabulated above, I deny the assessee's submission in this regard.

**12.** In light of the foregoing, I hold that the assessee is liable for payment of Service Tax amounting to Rs.8,99,823/- for the period from July, 2010 to December, 2010 and Rs.22,83,554/- for the period January, 2011 to December, 2011, totaling to Rs.31,83,377/- in terms of Section 73(2) of the Finance Act, 1994. Further, I also hold that the proposed demand of Rs.26,03,290/- for the period from January, 2010 to December, 2010 and Rs.25,49,941/- for the period from January, 2011 to December, 2011 is not sustainable as per laws.

**13.** Coming to the demand of interest, as per Section 75 of Finance Act 1994, if the person liable to pay service tax fails to pay the same by the due date, he is required to pay service tax along with interest at the applicable rates for the period of delay, i.e., for the period from the due date to the date of actual payment. In the present case, since M/s Alpine Estates has failed to discharge the service tax liability, I hold that the taxpayer is liable to pay interest at the applicable rate(s) on the service tax amount of Rs.31,83,377/- in terms of Section 75 of the Finance Act, 1994.

**14.1.** Penalty is a preventive as well as deterrent measure to defeat recurrence of breach of law and also to discourage non-compliance to the law of any wilful breach. Of course, just because penalty is prescribed that should not mechanically be levied following Apex Court's decision in the case of Hindustan Steel Ltd. V. State of Orissa reported in 1978 (2) ELT (J159) (S.C.) = AIR 1970 S.C. 253. Section 80 of the Finance Act, 1994 having made provision for excuse from levy of penalty under Section 76 if the assessee proves that there was a reasonable cause for failure under that section no other criteria is mandate of law to exonerate from penalty. The submission of the assessee made vide letter dated 21.03.2023 does not constitute reasonable cause so as to exonerate them from the penalties by



invoking Section 80 of the Act. Reliance is placed on the following case laws:-

(i) 2007 (6) S.T.R. 32 (Tri.-Kolkata)- CCE., Kolkata-1 Versus GURDIAN LEISURE PLANNERS PRIVATE LIMIED.

(ii) 2005 (188) E.L.T. 445 (Tri.- Chennai) - Trans (India) Shipping Private Limited Versus CCE. Chennai-1.

**14.2** In view of the above, I hold that in the both notices penalty under Section 76 is rightly imposed.

**15.** In the show cause notices, it is mentioned that the taxpayer had contravened Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994. As they have contravened the rules and provisions, they are liable to pay a penalty of Rs.1000/- in terms of Section 77 of the Finance Act, 1994.

**16.** Now I find it pertinent to extract and reproduce the saving provisions contained in Section 174 of the CGST Act, 2017 effective from 01.07.2017 for ease of reference and understanding. Section 174 reads as under:

**“Section 174.**

*(1) .....*

*(2) The repeal of the said Acts and the amendment of the Finance Act, 1994(hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—*

*(a) revive anything not in force or existing at the time of such amendment or repeal; or*

*(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or*

*(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts.*

*Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or*

*(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or*

*(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge,*



penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and **any such** investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, **adjudication and other legal proceedings** or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed **as if these Acts had not been so amended or repealed;**

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed”.

[Emphasis Supplied]

**17.** Accordingly, in terms of the provisions of Section 174 (2) (e) of the CGST Act, 2017 and in view of my findings aforementioned, I pass the following orders:-

### **ORDER**

**(A) In respect of Show Cause Notice OR. No.62/2011-Adjn(ST) dated 23.04.2011:**

(i) I **determine and order for recovery of Service Tax of Rs.8,99,823/-** (Rupees Eight Lakh Ninety Nine Thousand Eight Hundred Twenty Three Only) from them in terms of Section 73 (2) of the Finance Act, 1994.

(ii) I **drop the proposed demand of Rs.26,03,290/-** (Rupees Twenty Six Lakh Three Thousand Two Hundred Ninety Only) in view of my findings as discussed supra;

(iii) I demand interest at applicable rate on the services tax demanded at (A)(i) above in terms of Section 75 of the Finance Act, 1994 from them;

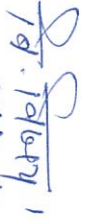
(iv) I impose as penalty @ Rs.200/- per day or 2% of such service tax per month whichever is higher, for the period of default till the date of payment of service tax under Section 76 of the Finance Act, 1994 on them . However, the total amount of penalty payable in terms of Section 76 shall not exceed the service tax payable.

(v) I impose a penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994.

**(B) In respect of Show Cause Notice OR. No.51/2012-Adjn(ST) dated 24.04.2012:**



- (i) I **determine and order for recovery of Service Tax of Rs.22,83,554/-** (Rupees Twenty Two Lakh Eighty Three Thousand Five Hundred Fifty Four Only) from them in terms of Section 73 (2) of the Finance Act, 1994.
- (ii) I **drop the proposed demand of Rs.25,49,941/-** (Rupees Twenty Five Lakh Forty Nine Thousand Nine Hundred Forty One Only) in view of my findings as discussed supra;
- (iii) I demand interest at applicable rate on the services tax demanded at (B)(i) above in terms of Section 75 of the Finance Act, 1994 from them;
- (iv) I impose as penalty @ Rs.200/- per day or 2% of such service tax per month whichever is higher, for the period of default till the date of payment of service tax under Section 76 of the Finance Act, 1994 on them . However, the total amount of penalty payable in terms of Section 76 shall not exceed the service tax payable.
- (v) I impose a penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994.

  
27/3/24  
(बी. विजय / B. Vijay)

अपर आयुक्त/Additional Commissioner

सिकंदराबाद जीएसटी आयुक्तालय/Secunderabad GST Commissionerate

To  
M/s. Alpine Estates.  
5-4-187/3 & 4, II Floor,  
Soham Mansion,  
MG Road, Secunderabad-500003.

(Through Range Officer)

Copy submitted to the Commissioner of Central Tax & Central Excise, Secunderabad Commissionerate, Hyderabad.

(Kind Attn.: Superintendent, Review)

Copy to:

1. The Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad Commissionerate.
2. The Assistant Commissioner of Central Tax (Arrears), Hqrs.Office, Secunderabad Commissionerate.
3. The Range Officer, Rangopalpet-1 GST Range, Secunderabad GST Division, **with a direction to serve the order on the assessee and forward the dated acknowledgement obtained from them to this office**
4. Master Copy / Spare Copy/Office copy.