

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench - Court No. - I

Service Tax Appeal No 31032 of 2018

(Arising out of **Order-in-Appeal** No.HYD-EXCUS-SC-AP2-0026-18-19, dated 27.04.2018
passed by Commissioner (Appeals-II), Hyderabad)

Paramount Builders

#5-4-187/3 & 4, II Floor,
Soham Mansion, M G Road,
Secunderabad,
Telangana - 500 003.

APPELLANT

..

VERSUS

**Commissioner of Central Tax,
Secunderabad - GST**

Secunderabad Commissionerate
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana - 500 004.

RESPONDENT

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Appearance

Shri P. Venkat Prasad, Chartered Accountant for the Appellant.
Shri A. Rangadham, Superintendent for the Respondent.

**Coram: HON'BLE Ms. SULEKHA BEEVI, C.S. MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30704/2019

Date of Hearing: 22.10.2019
Date of Decision: 22.10.2019

[Order per: SULEKHA BEEVI, C.S.]

1. Brief facts are that the appellant was issued show cause notice proposing to demand service tax under Works Contract Services for the period April 2014 to March 2015. After due process of law, the original authority confirmed the demand of Rs. 1,92,667/- under Works Contract Services along with interest and also imposed penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, Learned Consultant Shri P. Venkata Prasad, appeared and argued the matter. He referred to para 2 of the show cause notice and submitted that the Department alleges that the appellant has done certain construction activities after execution of the sale deed and therefore such construction activities ought to be subject to levy of service tax for which there is short payment of tax. Although in para 2 the

department proposes to tax the construction activities done after the execution of sale deed, while raising the demand, the value in the sale deed is also included. He pointed out that in table shown in para 4 of the show cause notice, the computation of the demand is shown by the department. This table would show that the department has taken into consideration sale value shown in the sale agreement as the basis for demanding major portion of the service tax. In fact the appellant had completed the construction of the flats and occupation certificate was issued by the authorities in 2009. The sale deed in favour of purchaser was executed later and so the transaction is sale of immovable property. The value shown in the sale deed therefore cannot be said to be subject to levy of service tax. The appellant had done some minor works after the execution of sale deed. If at all, only the amount collected by the appellant for construction activities after execution of the sale deed would be liable to service tax. This amount would be only Rs. 11,985/- as shown in the table contained in the para 4 of the show cause notice. He prayed to set aside the demand raised by including the sale deed value.

3. Learned AR Shri A. Rangadham appeared and argued on behalf of the department. He submitted that the date of issue of occupation certificate is immaterial since the demand is confirmed under works contract services and not under construction of Residential Complex Services. He supported the findings in the impugned order.

4. Heard both sides.

5. On perusal of the show cause notice, as explained by the Learned Consultant appearing for the appellant, an amount of Rs. 42,29,075/- which is the amount shown as sale value in the sale deed is included for ascertaining the short payment of tax. It is also seen that the said sale deed was executed after occupation certificate was obtained by the appellant. Thus, the transaction would indeed be sale of immovable property and the value of Rs. 42,29,075/- shown in the sale deed cannot be subject to levy of service tax. However, certain construction works have been carried out by appellant for an amount of Rs. 11,985/-. The appellant has conceded that they are liable to pay service tax on this amount.

6. From the discussions made above, we hold that the demand of service tax to the tune of Rs.1,92,667/- cannot sustain. The demand of service tax

(3)

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on Rs. 42,29,075/- is set aside. The demand is confined to the service tax liable to be paid on Rs. 11,985 only as discussed above. Taking note of the facts of the case, the penalties imposed are also set aside.

7. The appeal is partly allowed in above terms.

(Order dictated & pronounced in open court)

(SULEKHA BEEVI, C.S.)
MEMBER(JUDICIAL)

(P. ANJANI KUMAR)
MEMBER(TECHNICAL)

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