

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

Service Tax Appeal No. _____ of 2013

Stay Application No. _____ of 2013

Between:

**M/s. Modi and Modi Constructions,
5-4-187/3&4, 2nd Floor,
M.G Road,
Secunderabad- 500 003**

..... Appellant

Vs.

**The Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad-II Commissionerate,
Central Revenues Building,
1st Floor, L.B.Stadium Road,
Hyderabad – 500 004**

..... Respondent

**Application seeking waiver of pre-deposit and stay of recovery of
Adjudication levies under section 35F of the Central Excise Act, 1944**

The Appellant in the above appeal petition is the Applicant herein and craves to submit for kind consideration of this Hon'ble tribunal as under:

1. The Applicant/Appellant is now in appeal against Order-In-Appeal No. 14/2013 (H-II) S. Tax (Appeal No. 199/2012 (H-II) S. Tax) dated 30.01.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Hyderabad, L.B Stadium Road, Hyderabad- 500 004 confirming the demand of service tax under provisions of Section 73 of the Finance Act, 1994.
2. The facts and events leading to the filing of this application and grounds of appeal have been narrated in the memorandum of appeal in Form ST-5 filed along with this application, and the Applicant/Appellant craves leave of this Honorable tribunal to adopt, reiterate and maintain the same in support of this application. The Applicant / Appellant maintain and reiterate the same grounds in support of this application.



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Partner

3. The Applicant submits for the period January 2010 to December 2010, the SCN had claimed that entire receipts of Rs. 2,92,82,693/- are taxable. However, appellant is unable to understand how the said figures have been arrived at by the Adjudicating Authority. As per the statement submitted, the total receipts during the period are Rs. 3,91,12,693/-. Out of the said amount Rs.15,12,000/- is received towards value of sale deed, Rs.45,19,486/- towards land development charges and Rs.1,32,43,968/- is towards taxes and other charges which shall not be leviable to service tax. The appellant has given breakup of such amounts along with the documentary proof for all such amounts which are Rs.2,00,000/- or above. Therefore, assuming but not admitting, service tax if any is payable should be levied only on amount of Rs.2,43,47,725/- and not on the entire amount as envisaged in the order.
4. The Applicant submits for the period January 2011 to December 2011, the SCN had claimed that entire receipts of Rs.6,70,15,724/- are taxable without providing the permissible deductions. Out of the said amount Rs.45,73,000/- is received towards value of sale deed and Rs.37,64,435/- is towards taxes and other charges which shall not be leviable to service tax. The appellant has given breakup of such amounts along with the documentary proof for all such amounts which are Rs.2,00,000 or above. Therefore, assuming but not admitting, service tax if any is payable should be levied only on amount of Rs.5,81,28,289/- and not on the entire amount as envisaged in the order. The Ld. Commissioner (Appeals) vide Para 12 accepted the above submissions and directed the lower authority to arrive the correct taxable value and liability of the service tax.
5. An amount of service tax Rs.23,73,124/- is already paid by Cash and Rs.7000/- paid by the CENVAT Account towards liability of service tax.



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for the period January 2011 to December 2011. Stay application is filing along with this appeal for waiver of pre-deposit of remaining amount of the Service Tax, applicable interest, and Penalty under Section 76 & 77 of the Finance Act, 1994 and to stay the operation of the impugned order.

6. The Applicant submits that summery of value of taxable service as per the show cause notice and correct value of taxable receipts as submitted before the Ld. Commissioner (Appeals) and details of the amount paid enumerated in the following table.

Period (1)	Receipts as per the SCN (2)	Correct Receipts as submitted before Ld. Commissioner (Appeals) (3)	Tax liability as per the SCN (4)	Tax liability on corrected figures (5) (3)*4.12%	Amount paid before show cause notice (6)
January 2010-December 2010	Rs. 2,92,82,693/-	2,43,47,725/-	Rs.12,06,447 /-	10,03,126/-	-
January 2011 to December 2011	Rs. 6,70,15,724/-	5,81,28,289/-	Rs.27,61,048/-	23,94,885/-	Rs. 23,80,124/-

Total actual liability of service tax

Rs.3398011/-

Service Tax paid before SCN

Rs. 23,80,124/-

Actual short payment

Rs.10,17,887/-

7. The Applicant submits that they have the prima facie over the case and hence requirement of pre-deposit would cause irreparable undue hardship. In this regard wishes to rely following judgments.

a. M/s Classic Promoters and Developers, M/s Classic Properties v/s

CCE Mangalore 2009 (015) STR 0077 (Tri-Bang)

b. M/s Virgo Properties Pvt Limited Vs CST, Chennai (Dated: May 3

2010) 2010-TIOL-1142-CESTAT-MAD,

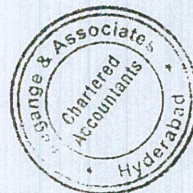
c. Ardra Associates Vs. CCE, Calicut - [2009] 22 STT 456 (BANGALORE CESTAT)

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[Signature]
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- d. Ocean Builders vs Commissioner of C. Ex., Mangalore 2010 (019)
STR 0546 Tri.-Bang
 - e. Mohtisham Complexes Pvt. Ltd. vs Commr. of C. Ex., Mangalore
2009 (016) STR 0448 Tri.-Bang
 - f. Shri Sai Constructions vs Commissioner of Service Tax, Bangalore
2009 (016) STR 0445 Tri.-Bang
 - g. Ambika Paints Ply & Hardware Store vs Commissioner of Central
Excise, Bhopal 2012 (27) STR 71 (Tri-Del)
8. The Applicant/Appellant submits that they have a strong *prima facie* case on merits, and the balance of convenience is also in their favour, and the demand of adjudication levies is not only illegal, but untenable and they would be put to "undue hardship" if called upon to pre-deposit the entire adjudication dues, or if the impugned order is not stayed during the pendency of this appeal and have filed this application.
9. The Applicant/Appellant has not made any similar petition or application before any other forum, Tribunal or Court and would therefore entreat this Hon'ble Tribunal to entertain and dispose of this application on merits.
10. The Applicant/Appellant submits that the amount payable is huge and there is no sufficient amount for the payment of the pre-deposit if any order, which would lead to a huge financial crunch, and in turn would result in the threat for the continuity of the business.



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11. The Applicant/Appellant has relied upon a number of judicial decisions in support of their grounds of appeal and craves leave of this Hon'ble Tribunal to rely on the same in support of this application.

12. The Appellant submits that in the following decisions the Courts have held that while deciding a stay application, an appellate forum is required to first look into the prima-facie merits of a case and then the financial hardship, and if there is a prima-facie case, stay could be granted, in terms of *Benara Valves Limited v. CCE*, 2006 (204) ELT 513 (SC); *Mehsana District Milk PU Cooperative Ltd., Vs. UOI*, 2003 (154) ELT 347 (SC) and *ITC Vs. CCE*, 2005 (18 4) ELT 347 (All); *Hoogly Mills Co. Ltd., Vs. UOI*, 1999 (108) ELT 637 (Cal.). Your Appellant therefore prays that the prima-facie nature of the case be kindly considered and the Honourable tribunal Appeals be pleased to grant stay along with waiver of pre-deposit of adjudication levies.

[Signature]
Applicant Partner

PRAYER

Wherefore, it is prayed that this Hon'ble tribunal be pleased to grant waiver of pre-deposit of service tax, interest and penalty and stay the recovery of the said amount during the pendency of the appeal, and hear the appeal on merits in the justice and equity, for which act of justice and fairness, the Applicant would as in law, be beholden and would pray for in law & c

Place: Hyderabad

Dated: 27.06.2013

[Signature]
Applicant Partner



VERIFICATION

I, Soham Modi, Partner of M/s Modi and Modi Construction, Hyderabad the Appellant hereinabove, do hereby declare that what is stated above is true to the best of our information and belief.

Verified at Hyderabad on this 27th day of June 2013

Place: Hyderabad

Date: 27.06.2013

For MODI & MODI CONSTRUCTIONS

Applicant Partner



IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Sub: Appeal against the order of the Commissioner of Customs, Central Excise and Service Tax (Appeals), in Order in Appeal No. 14/2013 -(H-II) S. Tax dated 30.01.2013

I, Soham Modi, Partner of M/s Modi and Modi Constructions, hereby authorize and appoint Hiregange & Associates, Chartered Accountants, Bangalore or their partners and qualified staff who are authorised to act as authorised representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above authorised representative or his substitute in the matter as my/our own acts, as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

Executed this 27th day of June 2013 at Hyderabad

Signature

Partner

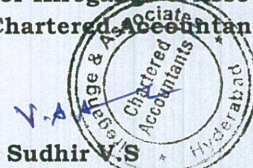
I the undersigned partner of M/s Hiregange & Associates, Chartered Accountants, do hereby declare that the said M/s Hiregange & Associates is a registered firm of Chartered Accountants and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 35Q of the Central Excises Act, 1944. I accept the above said appointment on behalf of M/s Hiregange & Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 27.06.2013

Address for service :

**Hiregange & Associates,
No. 1010, 26th Main,
Above Corporation Bank,
4th T Block, Jayanagar,
Bangalore- 560 041.**

**For Hiregange & Associates
Chartered Accountants**



**Sudhir V.S.
Partner (M. No. 219109)**