

5.697-699

CUSTOMS, EXCISE & SERVICE TAX APPELATE TRIBUNAL
SOUTH ZONAL BENCH, FKCCI-WTC BUILDING, K.G.ROAD,
BANGALORE-560009

Dated:01.05.2012

Appeal No(s). E/C/ST/698,440&441/20
Stay/Misc/ROA/Rom. E/C/ST/Stay/698,700 & 701/2011

Copy forwarded to:

Shri/Smt/M/s Grandeur Homes (P) Ltd,
① 5-4-187/3 & 4, III floor,
M.G. Road, Secunderabad 500 003

② Paramount Builders &
③ Modi x Modi Constructions

2. The Commissioner of Central Excise/Customs, Hyderabad
3. The Commissioner of Central Excise/Customs (Appeals) Hyderabad
4. The JCDR, CESTAT, Bangalore
5. The Advocate/consulate/Auth. Rep
M/s Hiregange & Associates,
1010, FF, 26th Main, 4h T, Block,
Jayanagar, Bangalore-41
6. M/s Centax Publications (P) Ltd
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Assistant Registrar

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL**
SOUTH ZONAL BENCH, FKCCI COMPLEX, K.G. ROAD,
BANGALORE - 56009.

DATE OF HEARING : 18/4/2012
DATE OF DECISION : 18/4/2012

**Stay Application Nos. 438, 440 & 441/2011
Service Tax Appeal Nos. 698, 700 & 701 of 2011**

- 1) M/s Grandeur Homes Pvt. Ltd. ... Appellants
2) M/s Paramount Builders
3) M/s Modi & Modi Constructions

Versus

Commissioner of Central Excise, ... Respondent
Hyderabad.

Appearance

Shri Rajesh Kumar, Chartered Accountant for appellants
Shri V.V. Hariharan, Commissioner (AR), assisted by
Shri M.M. Ravi Rajendran, Dy Commissioner (AR) and
Shri N. Jagdish, Superintendent (AR) for respondent.

CORAM : **Hon'ble Shri P. G. Chacko, Member (Judicial)**
Hon'ble Shri M. Veeraiyan, Member (Technical)

Stay ORDER Nos. 697 & 699 Dated 18/4/2012

[Order per: M. Veeraiyan] :

Heard both sides on the stay petitions

2 The appellants, in all the three cases, are engaged in 'construction of residential buildings' which they sell at semi-finished stage and they entered into agreements with the owners of the flats for undertaking further construction activities. In all these cases, the department has treated the activities as falling under the

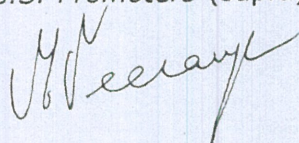


category of "Construction of Complex Service" and demanded service tax/differential service tax along with interest and imposed penalties.

3. The learned Chartered Accountant appearing for the appellants submits that the Tribunal in similar situation in the case of *Mohtisham Complexes (P) Ltd. vs. Commissioner of C. Ex., Mangalore* [2011 (21) S.T.R. 551 (Tri.-Bang.)] has taken a stand that the builder cannot be treated as a service provider prior to 1.7.2000 when the Explanation to Section 65 (105) (zzzh) was amended. He also relied on the clarification issued by the Board vide Circular No 108/02/2009-ST dated 29.1.2009, which was reiterated in Circular No. 151/2/2012-ST dated 10.2.2012.

4. The learned Commissioner (AR), duly assisted by the learned Deputy Commissioner (AR) and the learned Superintendent (AR), submits that in the light of the decision of the Hon'ble High Court of Punjab & Haryana in the case of *G.S. Promoters vs. Union of India* [2011 (21) S.T.R. 100 (P&H)], the Explanation dated 1.7.2010 should be considered clarificatory in nature and should be applied retrospectively.

5.1. We, *prima facie*, find that these three cases are different from the cases dealt with ⁱⁿ *Mohtisham Complexes (P) Ltd.* (supra) and *G.S. Promoters* (supra) inasmuch as the appellants have sold their

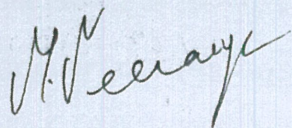


flats in semi-finished stage and, thereafter, undertaken services of further construction after entering into agreements with the flat owners. Therefore, the applicability of the Board's Circulars relied upon by the learned Chartered Accountant and the decisions relied upon by the learned Commissioner (AR) to the facts of these cases requires to be gone into in detail at the time of final disposal.

5.2. Meanwhile, on instructions from the appellants, the learned Chartered Accountant offers to pre-deposit (i) in the case of M/s Grandeur Homes Pvt. Ltd., an amount of Rs. 10 lakhs as against the total demand of Rs. 31 lakhs; (ii) in the case of M/s Paramount Builders, a sum of Rs. 3 lakhs as against the total demand of about Rs. 12 lakhs; and (iii) in the case of M/s Modi & Modi Constructions, a sum of Rs. 2 lakhs as against the total demand of Rs.6.04 lakhs.

5.3. Considering the entire facts and circumstances of the cases, we deem it appropriate to accept the offer of pre-deposits on behalf of the appellants and direct the appellants to pre-deposit the amounts as follows :

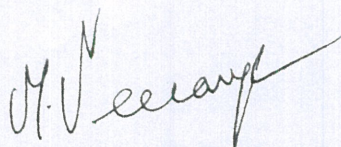
- (a) M/s Grandeur Homes Pvt. Ltd. : Rs. 10,00,000/-
(Rupees Ten lakhs only)
- (b) M/s Paramount Builders : Rs. 3,00,000/-
(Rupees Three lakhs only)
- (c) M/s Modi & Modi Constructions : Rs. 2,00,000/-
(Rupees Two lakhs only)



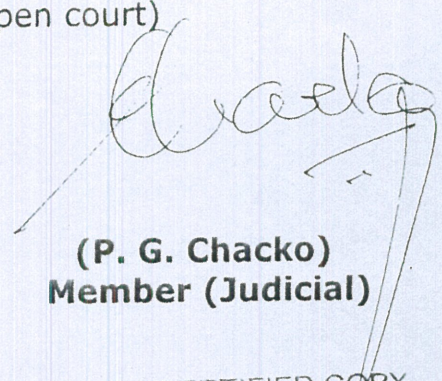
The above deposits shall be made within six weeks from today and compliance reported to the Assistant Registrar on 12.7.2012. The Assistant Registrar is to report to the Bench on 19.7.2012. Subject to deposit of the above amounts, there shall be waiver of pre-deposit of the balance of dues as per the impugned orders and stay of recovery thereof till the disposal of the appeals.

6. It is made clear that in the event of non-compliance of this order, the appeal of the defaulting appellant shall be dismissed without further notice to the concerned appellant.

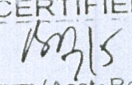
(Pronounced and dictated in the open court)


(M. Veeraiyan)
Member (Technical)

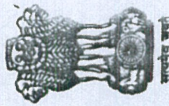
/VC/


(P. G. Chacko)
Member (Judicial)

प्रमाणित प्रतः / CERTIFIED COPY


सहायक पंजीकार / Asst. Registrar
सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपील अधिकरण
Customs, Excise & Service Tax Appellate Tribunal
(दक्षिण आंचलिक बेंच) / (South Zonal Bench)
बैंगलूर / Bangalore-9.





5/12 669/12

4/ 50-666-169/12

5/ 50-697-699/12

1252

Registration
No. C 1252



भारत सरकार सेवार्थ

ON INDIA GOVERNMENT SERVICE

1/ 50-668/12

2/ 50-695/12

10, Hinganga & Associates
(Above Corp Bank)

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Bangalore - 560041

प्रेषक / Despatcher :

सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण

१ तल्ल, डब्ल्यू.टी.सी., एफ.के.सी.सी.आई. कॉम्प्लेक्स, केंपेगौडा रोड, बेंगलूर - 560 009.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WTC, 1st Floor, FKCCI Complex, Kempegowda Road, Bangalore - 560 009.



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