# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL:SOUTH ZONAL BENCH:BANGALORE

**MISC. ORDER No. 23565 / 2014**

Application(s) Involved:

**ST/Stay/26553/2013 in ST/26234/2013-DB**

**Mehta & Modi Homes**
5-4-187/3&4, 2nd Floor, M.G. Road,
Secunderabad – 500 003
Andhra Pradesh

**Appellant(s)**

**Versus**

**Commissioner of Central Excise,**
**Customs and Service Tax**
**Hyderabad-I**
Kendriya Shulk Bhavan,
L.B Stadium Road, Basheerbagh,
Hyderabad – 500 004
Andhra Pradesh

**Respondent(s)**

**Appearance:**

Mr. Rajesh Kumar, CA
Hiregange & Associates
#1010, 1st floor (Above Corp. Bank)
26th Main, 4th T Block, Jayanagar,
Bangalore – 560 041
Karnataka

Mr. Sunil B. Gabhawalla, CA
B-12, "La Bella", Azad Lane, Andheri
(East), Mumbai – 400 069

For the Appellants

Mr. A.K. Nigam, AR

For the Respondent

**CORAM:**

**HON'BLE SHRI B.S.V. MURTHY, TECHNICAL MEMBER**
**HON'BLE SHRI S.K. MOHANTY, JUDICIAL MEMBER**

Date of Hearing: 26/06/2014 Date of Decision: 26/06/2014

**Order Per: B.S.V. MURTHY**

Demand for service tax of Rs. 22,72,979/- under Construction of Complex Service and Rs. 5,55,04,153/- under Works Contract Service with interest has been confirmed against the appellant for the period from 01.04.2006 to 31.05.2007 and 01.06.2007 to 31.12.2010 respectively.

2. Learned CA on behalf of the appellants submitted that an amount of Rs.75,47,519/- has already been paid before the issue of show-cause notice. He also submits that the entire consideration received by the appellant is for construction of duplex bungalows and villas and the demand made under Residential Complex Service as well as Works Contract Service is not sustainable. He relies upon the decision in the case of *Macro Marvel Projects Ltd. Vs. CST, Chennai [2008 (12) S.T.R. 603 (Tri.-Chennai)]* to submit that construction of individual residential houses is not covered by the service of Construction of Residential Complex. It was also held that after 01.06.2007 it cannot be covered under Works Contract Service also. However it was specifically mentioned that the observations regarding Works Contract Service need not be taken into account. In the case of *Krishna Homes Vs. CCE, Bhopal [2014 (34) S.T.R. 881 (Tri. - Del.)]*, the Tribunal has already taken a view that after 01.06.2007 also individual flats cannot be considered as service rendered under 'Works Contract Service'. In any case the definition of service remained the same till 01.07.2010 and prior to that there was no levy of service tax on individual residential construction. Only when a residential complex was constructed as a service, levy was applicable. Therefore we find that the decision of this Tribunal in the case of Macro Marvel Projects upheld by the Hon'ble Supreme Court *prima facie* is applicable to the facts of this case also. In view of the above, we consider that the amount deposited by the appellant is sufficient to hear the appeal and accordingly the requirement of pre-deposit is waived and stay against recovery is granted during the pendency of appeal.

(Operative portion of the order has been pronounced
in open court on 26.06.2014)

**(S.K. MOHANTY)**
**JUDICIAL MEMBER**

**(B.S.V. MURTHY)**
**TECHNICAL MEMBER**

...iss

सीमाशुल्क, उत्पादशुल्क और सेवा कर अपील अधिकरण / Customs, Excise & Service Tax Appellate Tribunal / सत्यमेव जयते / Bangalore / बेंगलूर

प्रमाणित प्रति / CERTIFIED COPY
19/01/15
तकनीकी अधिकारी / Technical Officer
सीमाशुल्क, उत्पादशुल्क और सेवा अपील अधिकरण
Customs Excise and Service Tax Appellate Tribunal
(दक्षिण आंचलिक बेंच) / (South Zonal Bench)
बेंगलूर / Bangalore-9.