

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
HYDERABAD**

**MISCELLANEOUS APPLICATION NO/2019
IN
APPEAL NO. ST/26234/2013**

BETWEEN:

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

..... Appellant

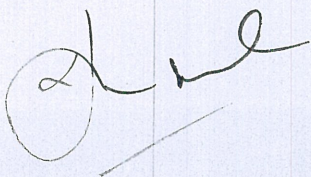
AND

The Commissioner of Customs, Central,
Excise and Service Tax
Hyderabad-I, Commissionerate,
Kendriya Shulk Bhavan,
1st Floor, L.B. Stadium Road,
Hyderabad - 500004

..... Respondent

**MISCELLANEOUS APPLICATION UNDER SECTION 35C OF THE
CENTRAL EXCISE ACT, 1944 FOR RECTIFICATION OF MISTAKE
IN FINAL ORDER NO. A/31630/2018 DATED 19.12.2018**

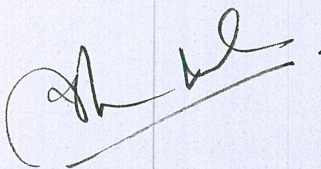
The Applicant had filed Appeal No. ST/26234/2013 against Order-In-Order No.07/2013 dated 17.01.2013 passed by Commissioner of Central Excise Customs and Service tax, Hyderabad-I before the Hon Tribunal. Appeals were heard on 19.12.2018. The Hon'ble Bench pronounced the decision in the open court after conclusion of the hearing and passed a Final Order No. A/31630/2018 dated 19.12.2018 by allowing the Applicant's appeal.



2. The Applicant submit that the Final Order No.A/31630/2018 dated 19.12.2018 passed by the Hon Tribunal was received on 25.01.2019. In this regard, Applicant would like to bring to the notice of the Hon'ble Tribunal that the disputed period is April 2006 to December 2010.

3. During the course of hearing, the main argument submitted by the Applicant is that the nature of activities carried out by the Applicant are construction of individual residential houses thereby not covered under Section 65(91a) of the Finance Act 1994 and in support of the same, Applicant has referred to Annexure VIII of the Appeal Memorandum filed with the Hon'ble CESTAT which evidences that individual permits were obtained for construction of each individual units. Further, Applicant has also submitted photographs of the individual units during the course of hearing.

4. The same was also evident from the Key Grounds mentioned in the synopsis submitted during the course of hearing. On perusal of the documents and submissions made during the hearing, the Hon'ble Bench has agreed with the submissions made by the Applicant and pronounced in the open court that service tax is not liable as the construction of individual residential houses are not covered under Section 65(91a) of the Finance Act 1994 and accepted the appeals filed by the Applicant.

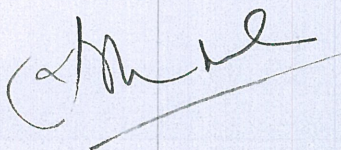
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4. Alternatively, Applicant has also submitted that the construction services provided by builders are not liable to service tax during the period prior to 01.07.2010 by relying on various case circulars and case laws.

5. Applicant submits that on perusal of Final Order dated 19.12.2018 though the Final order recorded the arguments that there is no construction of 'residential complex' and reliance placed on Hon'ble tribunal decision in case of Macro Marvel Projects Limited vs. Commissioner of Service Tax 2008 (12) STR 603 (Chennai) affirmed by Supreme Court 2012 (25) STR J154 (SC), while the written order has discussed only about the taxability of builders prior to 01.07.2010 and held that service tax is not liable on the construction activities undertaken by the builders prior to 01.07.2010 but has not made any mention regarding the main argument (i.e, activity carried out by the Applicant does not amount to 'Construction of Residential Complex') taken by the Applicant.

6. As the disputed period is April 2006 to December 2010 which also involves taxability of Construction service from 01.07.2010 to 31.12.2010, the decision given by the Hon'ble Tribunal that construction services provided prior to 01.07.2010 are not taxable may not be relevant thereby the demand for the period beyond 01.07.2010 remain unanswered by the Hon'ble Tribunal.

5. In this regard, Applicant submits that above appears to be an apparent mistake on the face of the record which is required to be rectified.

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6. The Applicant most respectfully submit that above referred mistakes be considered and the Final Order dated 19.12.2018 be rectified accordingly in the interest of justice and relief be granted.

PRAYER

7. Wherefore, the Appellants most respectfully pray that:

- i) Final Order No. A/31630/2018 dated 19.12.2018 be rectified as prayed above;
- ii) For such other or further order/s as deemed fit and proper

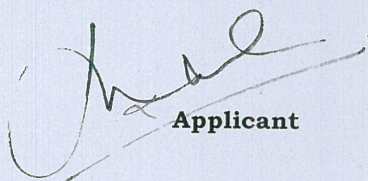
PRAYED ACCORDINGLY,


(FOR APPLICANT)

VERIFICATION

I, _____, _____ M/s. Mehta & Modi Homes, Secunderabad, the Appellants herein declare that what is stated above is true best of our information and belief.

Verified on __th day of January 2019


Applicant

Place: Secunderabad
Date: .01.2019

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
COMMISSIONERATE, KENDRIYA SHULK BHAVAN, 1ST FLOOR,
L.B. STADIUM ROAD, HYDERABAD - 1.

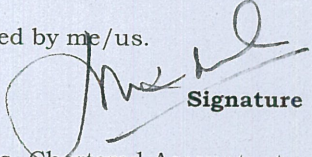
Sub: Miscellaneous Application under Section 35C of the Central Excise Act, 1944 for rectifying the mistake apparent on Final Order No. A/31630/2018 dated 19.12.2018 - M/s. Mehta & Modi Homes

I, _____, _____ of M/s. Mehta & Modi Homes, Applicant, hereby authorize and appoint Hiregange & Associates, Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as authorized 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 ___th day of January 2019 at Hyderabad


Signature

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: __.01.2019.

Address for service:

**Hiregange & Associates,
 Chartered Accountants
 4th Floor, West Block, Anushka Pride,
 Opp. Ratnadeep Supermarket,
 Road Number 12, Banjara Hills,
 Hyderabad - 500 034**

**For Hiregange & Associates
 Chartered Accountants**

**Venkata Prasad P
 Partner (M. No. 236558)**

I Partner/Employee/Associate of M/s. Hiregange & Associates duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

Sl No.	Name	Qualification	Mem./Roll No.	Signature
01	Sudhir V S	CA	219109	
02	Lakshman Kumar K	CA	241726	