

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE TWENTY SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

WRIT PETITION NOs: 26007 AND 26012 OF 2009

Between:

M/s. Modi & Modi Constructions, Having its Registered, Office 5-4-187/3, and 4 II Floor, MG Road, Secunderabad Rep. by its Managing Partner Mr. Soham Modi S/o. Satish Modi. 39 yrs, R/o. Plot No. 280, Road No. 25 Jubilee Hills, Hyderabad

...PETITIONER

AND

1. Union of India, Rep. by its Secretary, Ministry of Finance, Government of India, New Delhi
2. Commissioner of Central Excise, Customs and Service Tax, Hyderabad II Commissionerate, 3rd Floor, Shakkar Bhavan L.B. Stadium Road, Basheerbagh, Hyderabad
3. Superintendent of Service Tax, Hyderabad-II Commissionerate L.B. Stadium Road, Basheerbagh, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ direction or order especially in the nature of writ of Mandamus declaring that in view of the Circular no. 108/2/2009 dt. 29-1-2009 explaining the provisions of Finance Act 1994, agreements of sale/sale deeds/ agreements of construction in respect of residential dwelling units do not attract service tax with respect to the consideration payable by the prospective buyer to the builder/Promoter/developer and consequently issue a writ of prohibition against Respondents No. 2 and 3 from raising any demand on the

petitioner towards service tax in respect of agreements of sale/sale deeds/agreements of construction in respect of residential dwelling units.

I.A. NO: 1 OF 2015(WPMP. NO: 46595 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to implead the petitioner as the Respondent No.4.

I.A. NO: 1 OF 2009(WPMP. NO: 33863 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings pursuant to the notices issued by Respondent Nos. 2 and 3 for levy of service tax in relation to the consideration receivable by the petitioner from prospective purchasers of residential dwelling units either under an agreement of Sale/conveyance or under agreements of construction.

W.P.No.26012 OF 2009

Between:

M/S.Paramount Builders, 5-4-187/3and4 ,II floor, MG Road, Secunderabad rep.by its Managing partner Mr.Soham Modi S/o.Satish Modi aged 39 years,R/o.Plot No.280, Road No.25

...PETITIONER

AND

1. Union Of India, Represented by its Secretary, Ministry of Finance, Government of India, New Delhi
2. The Commissioner of Central Excise, Customs and Service, Tax, Hyderabad II Commissionerate, 3rd floor, Shakkar Bhavan L.B.Stadium Road, Basheerbagh,Hyderabad
3. The Superintendent of Service Tax, Hyderabad-II, Commissionerate, L.B.Stadium Road, Basheerbagh Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ direction or order especially in the nature of writ of mandamus declaring that in view of the circular No.108/2./2009 dated 29.1.2009

explaining the provisions of Finance Act,1994 agreements of sale/sale deeds/agreements of construction in respect in respect of residential dwelling units do not attract service tax with respect to the consideration payable by the prospective buyer to the builder/promoter/developer and consequently issue a writ of prohibition against Respondents no.2 and 3 from raising any demand on the petitioner towards service tax in respect of agreements of sale/sale deeds/agreements of construction in respect of residential dwelling units.

I.A. NO: 1 OF 2009(WPMP. NO: 33868 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings pursuant to the notices issued by Respondent Nos.2 and 3 for levy of service tax in relation to the consideration receivable by the petitioner from proposective purchasers of residential swelling units either under an agreement of sale /conveyance or under agreements of construction.

Counsel for the Petitioner in W.Ps: SRI CH.PUSHYAM KIRAN

**Counsel for the Respondents in W.Ps: SRI DOMINIC FERNANDES,
(Senior Standing Counsel for CBIC)**

The Court made the following: COMMON ORDER

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

WRIT PETITION Nos.26007 AND 26012 of 2009

COMMON ORDER: *(per Hon'ble Sri Justice P.SAM KOSHY)*

Since the issue raised in both the Writ Petitions is one and the same, they are being disposed of by way of present common order.

2. The instant two Writ Petitions have been filed seeking issuance of writ in the nature of Mandamus for implementation of Circular No.108/2/2009, dated 29.01.2009, explaining the provisions of the Finance Act, 1994.

3. These Writ Petitions have been filed in the year 2009. Though the Writ Petitions were admitted, no interim orders were granted in favour of the petitioners. The consequential relief that the petitioners had sought for was to restrain the respondents from raising any demand on the petitioners towards service tax in respect of agreements of sale/sale deeds/agreements of construction.

4. Today when the Writ Petitions are taken up for hearing i.e., after about 15 years, it has been informed by the learned

counsel for the petitioners that till today, there has been no demand as such made by the respondents.

5. In view of the fact that the Department has not made any demand in between as has been contended by the learned counsel for the petitioners, we are not inclined to entertain the Writ Petitions for implementation of the said Circular dated 29.01.2009 as of now. Nonetheless, the right of either of the parties to take appropriate recourse permissible under law, stands reserved.

6. Accordingly, the Writ Petitions stand disposed of. Consequently, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

SD/- N. CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

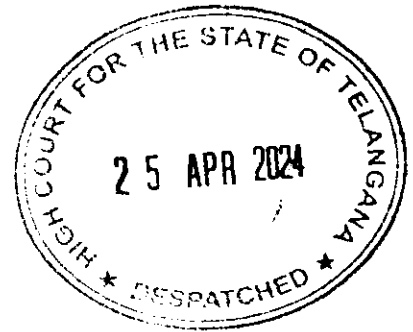
1. The Secretary, Union of India, Ministry of Finance, Government of India, New Delhi
2. The Commissioner of Central Excise, Customs and Service Tax, Hyderabad II Commissionerate, 3rd Floor, Shakkar Bhavan L.B. Stadium Road, Basheerbagh, Hyderabad
3. The Superintendent of Service Tax, Hyderabad-II Commissionerate L.B. Stadium Road, Basheerbagh, Hyderabad.
4. One CC to SRI CH.PUSHYAM KIRAN, Advocate. [OPUC]
5. One CC to SRI DOMINIC FERNANDES, (Senior Standing Counsel for CBIC). [OPUC]
6. Two CD Copies.
BSK
KKS

HIGH COURT

DATED:27/02/2024

COMMON ORDER

WP.No.26007 & 26012 of 2009



**DISPOSING OF THE WRIT PETITIONS
WITHOUT COSTS**

⑧ *WV*
15/4/24