



केन्द्रीय कर, केन्द्रीय उत्पाद शुल्क एवं सेवा करआयुक्त का कार्यालय  
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX  
सिकंदराबाद जीएसटी आयुक्तालय, जीएसटी भवन , एलबी स्टेडियम रोड,  
SECUNDERABAD GST COMMISSIONERATE, GST BHAWAN, L.B. STADIUM ROAD  
बशीरबाग, हैदराबाद BASHEERBAGH, HYDERABAD – 500 004.  
Email. adjudication3@gmail.com

OR No.39/2021-22-Sec-Adjn-ADC (ST)  
**DIN-20240356Y00000717817**

Date:28.03.2024

**मूल आदेश संख्या/ORDER-IN-ORIGINAL No.113/2023-24-Sec-Adjn-ADC(ST)**

(Passed by Shri B. VIJAY, Additional Commissioner of Central Tax, Central Excise and Service Tax, Secunderabad GST Commissionerate)

### **PREAMBLE**

1. यह प्रति उस व्यक्ति के निजी उपयोग के लिए निःशुल्क दी जाती है जिसे यह जारी किया गया है।

This copy is granted free of charge for the private use of the person to whom it is issued.

2. वित्त अधिनियम, 1994 की धारा 85 के तहत, संशोधित के रूप में, इस आदेश से पीड़ित कोई भी व्यक्ति आयुक्त (अपील), मुख्यालय, कार्यालय, 7 वें को इस तरह के आदेश / निर्णय के संचार की तारीख से 60 दिनों के भीतर अपील कर सकता है। मंजिल, एलबी स्टेडियम रोड, बशीरबाग, हैदराबाद - 500 004।

Under Sec.85 of the Finance Act, 1994, as amended, any person aggrieved by this order can prefer an appeal within 60 days from the date of communication of such order/decision to the Commissioner (Appeals), Hqrs., Office, 7th floor, L.B. Stadium Road, Basheerbagh, Hyderabad – 500 004.

3. इस आदेश के खिलाफ एक अपील आयुक्त (अपील) के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद या जुर्माना है, जहां अकेले दंड विवाद में है।

An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute.

धारा 85 के तहत आयुक्त (अपील) के लिए एक अपील एसटी -4 के रूप में की जाएगी और निर्धारित तरीके से सत्यापित की जाएगी।

An appeal under Sec.85 to the Commissioner (Appeals) shall be made in form ST-4 and shall be verified in the prescribed manner.

4. एस टी ४ फार्म में की गई अपील अनुलिपि में प्रस्तुत की जानी चाहिए और उसके साथ जिसने निर्णय या आदेश विरुद्ध अपील की जा रही हो। उसकी एक प्रति भी संलग्न की जानी चाहिए।

The form of appeal in Form No: ST-4 shall be filed in duplicate and shall be accompanied by a copy of the decision or the order appealed against.

5. अपील और जिसने निर्णय या आदेश के विरुद्ध अपील की जा रही हो उस आदेश की प्रति पर भी समुचित मूल्य के अदालती टिकट लगाए जाने चाहिए.

The appeal as well as the copy of the decision or order appealed against must be affixed with their fee stamp of the appropriate amount.

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Sub: Service Tax - Non -payment of Service Tax on Works Contract  
Service by M/s. Kadakia & Modi Housing - Issuance of Order In  
Original for the period from October 2010 to June, 2017 - Reg.

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#### **BRIEF FACTS OF THE CASE:**

M/s. Kadakia & Modi Housing having their Registered office at 5-4-187/3 & 4, II Floor Soham Mansion, M.G. Road, Secunderabad (here-in-after referred to as M/s KMH or the "assessee") are engaged in the construction of Villas and are registered with Service Tax Department under STC No. AAHFK8714ASD001 for "Construction of Residential Complex service" and "Works Contract Service"

2. Intelligence received indicated that M/s KMH are Constructing Villas under the project titled "Bloomsdale", and are not discharging Service Tax properly. Documents were called from M/s KMH under Summons and a statement was recorded from the authorized signatory of the Company on 16/11/2015 and 01/02/2016.

2.1 Sri M. Jaya Prakash authorized signatory of the assessee in his Statement dated 16/11/2015 and 01/02/2016, (Enclosed as E.6) inter-alia submitted that

- M/s KMH are involved in the activity of Construction of Residential Villas;

- so far there is only one project of Residential Villas known as "Bloomsdale" located at Shamirpet Village;
- they acquired the land by outright purchase and the project consists of 72 Villas out of which 31 Villas were sold upto 2014-15;
- the mode of sale is that they enter into agreement of sale, then execute sale deed (for land Value) and agreement of Construction; that they are first appropriating the amounts received from the Customer towards the sale deed thereafter they appropriate the amounts towards agreement of construction. Amounts received from third parties like Registration Charges, VAT, Service Tax, Electricity deposit, maintenance charges are excluded for the purpose of estimating service tax liability;
- that they are paying Service Tax under the category of "Works Contract Service" against Agreement of Construction Value only;
- that because of ambiguity on applicability of service tax before the amendment to the act in 2012 they were given to understand that service tax is not applicable for the activity undertaken by them;
- that they are willing to pay the amounts collected under Works Contract Service.

**2.2** Examination of the documents revealed that M/s KMH have not filed the Statutory ST-3 Returns and not paid any service tax for the period October 2010 to March 2011. For the year 2011-12 they have filed the ST-3 returns and self-assessed their service under Construction of Residential Complex service for the period upto September 2011; and from October 2011 onwards they changed the classification of the service and are discharging duty under Works Contract Service and they filed the returns for the period 2012-13 to 2014-15.

**2.3** Examination of the Agreement of Sales indicated that M/s KMH are collecting the agreed value under the following three separate heads

A. Towards Sale of land

B. Towards development Charges of land for laying of roads, drains parks etc

C. Towards Cost of Construction, water and electricity connection and for other amenities.

**2.4** The following consideration details in Condition number 1 of the agreement dated 12.11.2009 entered with Major Achyut Ranjan confirms the above mode of receipt of payments

| SI. No. | Description                                                                           | Amount          |
|---------|---------------------------------------------------------------------------------------|-----------------|
| A.      | Towards sale of land                                                                  | Rs. 1,85,000/-  |
| B.      | Towards development charges of land for laying of roads, drains, parks, etc.          | Rs.11,95,000/-  |
| C.      | Total towards land cost (A-B)                                                         | Rs.13,80,000/ - |
| D.      | Towards cost of construction, water & electricity connection and for other amenities. | Rs.20,70,000/ - |
| E.      | Total sale consideration (C+D)                                                        | Rs.34,50,000/ - |

**2.5.** As per Para 13 of agreement of Sale dated 12.11.2009 entered with Major Achyut Ranjan reads as under

*"13 The vendee shall enter into a separate agreement with the vendor for construction of the bungalow as per the specifications and other terms and conditions agreed upon. The vendee shall also enter into separate agreement with the Vendor for payment of development charges on land"*

**2.6.** Identical conditions forms part of the all other agreement of Sales in respect of other customers. Accordingly M/s KMH are entering into separate agreement for development of land and for construction of Villas. M/s KMH vide their letter dated 09.02.2016 informed that in the Statement of receipts

submitted by them, under Column "Receipts towards agreement of Construction include the receipt towards the land development".

**2.7.** However examination of the receipts vis-à-vis the amounts indicated in the Agreement of sales showed that the cost of Land development is not included in the Agreement of Construction in some cases and partially included in some cases. The Cost of land development in some cases is included in the amount indicated in the Sale deed (Cost of land value) and exemption is claimed in this respect

**2.8.** The activity of land development involves preparing the site suitable for construction, laying of roads, laying of drainage lines water pipes etc. Thus it is a separate activity different from construction of Villas.

**2.9.** Upto the period 30.06.2012, as per Section 65 (97a) of the Finance Act 1994 Site formation and clearance excavation and earthmoving and demolition includes

- (i) drilling, boring and core extraction services for construction, geophysical geological or similar purposes
- (ii) soil stabilization or
- (iii) horizontal drilling for the passage of cables or drain pipes or
- (iv) land reclamation work or
- (v) contaminated top soil stripping work or
- (vi) demolition and wrecking of building structure or road

**2.10.** Upto the period 30.06.2012 As per Section 65(105) (zzza) of Finance Act 1994 "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities

**2.11.** Thus, it appeared that the activity of development of land fall under the definition of site formation as per Section 65(97a) ibid and the development charges collected are taxable to service tax as per Section 65

(105)(zzza) *ibid.* and with effect from 1.7.2012 it appeared to be a service under Section 65B (44) of the Act and taxable under the provisions of 65B (51) read with Section 66(B) of the Act. Further the activity does not fall under the negative list mentioned in Section 66 D of the Act. Thus the activity of land development appeared to be chargeable to service tax without any abatement.

**2.12.** Upto the period 30.06.2012 As per Section 65 (105) (zzzza) of Finance Act, 1994, **"Taxable Service"** means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

*Explanation.*-For the purposes of this sub-clause, "works contract" means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
  - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre- fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, ductwork and sheet metal work, thermal insulation, sound insulation, fire proofing or waterproofing, lift and escalator, fire escape staircases or elevators; or
  - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
  - (c) construction of a new residential complex or a part thereof; or
  - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
  - (e) turnkey projects including engineering, procurement and construction or
  - (f) commissioning (EPC) projects;

From 01.07.2012 onwards, the Service portion of Works Contract service is a **"declared service"** under **Section 66E(h)** of Finance Act as amended.

**2.13.** After 01.07.2012, as per **Section 66B** of Finance Act 1994 as amended, *there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

**2.14.** As per Sec **65B(34)** of Finance Act 1994, *"negative list" means the services which are listed in **section 66D**;*

**2.15** As per Sec 65B(51) of Finance Act 1994, *"taxable service" means any service on which service tax is leviable under section 66B;*

**2.16.** As per **Sec 65B (44)** of Finance Act 1994 *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

*(a) an activity which constitutes merely,-*

*(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii) a transaction in money or actionable claim;*

*(b) a provision of service by an Employee to the Employer in the course of or in relation to his Employment;*

*(c) fees taken in any Court or tribunal established under any law for the time being in force.*

**2.17.** As per Section 68 of the Finance Act 1994, every person providing taxable service to any person shall pay service tax at the rate specified in section 66 (upto 30.06.2012) and Section 66B (from 01.07.2012 onwards) in such manner and within such period as may be prescribed.

**2.18.** Section 66D specifies the Negative List of services & Exemption Notification No. 25/2012 dated 20.06.2012 lists the exempted taxable services. "Works Contract Service" does not figure in the negative list or in the said exemption Notification.

**2.19.** As detailed above the M/s KMH are entering into a Separate agreement of construction with his customers and the activity appears to be taxable under Works Contract Service even during the period from October 2010 to September 2011 during which M/s KMH appears to have erroneously classified the service under construction of Residential Complex Service. The fact that M/s KMH are discharging VAT under Works Contract and are assessing the service under Works Contract confirms the nature of the service that it is "Works Contract Service" Only.

**2.20.** As mentioned in above the cost of construction includes the cost of providing common amenities also. Sri Jaya Prakash in his Statement dated 01/02/2016 in response to Question No 3 submitted that the cost of providing common amenities is between one to one and half lakh rupees and the cost forms a part and parcel of Cost of Construction and they are discharging Service tax for the said amount under works contract providing common amenities is not a Works Contract as there is no transfer of property to the individual. Hence the abatement appears to be not available for the value of Rs.1,50,000/- per Villa (being the higher of the value admitted as M/s KMH failed to arrive at the correct value of common amenities) and appeared to be chargeable to full rate of Service Tax under other taxable services

**2.21.** In view of the foregoing it appeared that M/s KMH are liable to discharge charge service tax for Cost of land development shown in agreement of sales under "Site formation Service ". They appeared to be liable to service tax on the full value of Common amenities without any abatement at full rate. They appeared to be liable to Service Tax under "Works Contract Service" in respect of the value of construction shown in

agreement of sales excluding the value of Common amenities. The cost of land shown in agreement of sales only appears to be exempt from service tax.

**2.22.** Accordingly the service tax liability is arrived at villa wise.

**3.** Agreement of Sales indicates that the assessee is collecting the agreed value under the following two heads only.

A Towards Sale of land

B Towards Cost of Construction, water and electricity connection and for other amenities.

The consideration details in Condition Number 1 of the Agreement of Sale dated 20.07.2012 entered with Sri Abdul Rahim and another confirms the above mode of receipt of payment.

| <b>Sl. No.</b> | <b>Description</b>                                                                    | <b>Amount</b>  |
|----------------|---------------------------------------------------------------------------------------|----------------|
| A.             | Towards sale of land                                                                  | Rs.18,00,000/- |
| B.             | Towards cost of construction, water & electricity connection and for other amenities. | Rs.26,83,000/- |
| C.             | Total sale consideration (A+B)                                                        | Rs.44,83,000/- |

**3.1.** M/s KMH are not entering into any land development agreement in respect of these customers. In his Statement dated 01/02/2016, Sri M. Jaya Prakash authorized signatory of the Company in response to question number 4 why there is no separate agreement for development of land in respect of some customers, submitted that these booking were done after development of the land, that is why there is no separate agreements for land development charges in respect of them.

**3.2.** Condition No 1 of the sale deed dated 10.09.2012 entered with Sri Abdul Rahim and another indicates the following details

“The Vendor do hereby convey, transfer und sell the Plot No. 9, ad measuring 183 sq. yds., along with semi-finished construction having a total built-up area of 1849 sft., forming part of Sy. No.1139 situated at Shamirpet Village, Shamirpet Mandal, Ranga Reddy District which is hereinafter referred to as the Scheduled Property and more particularly described in the schedule and the plan annexed to this Sale Deed in favor of the Vendee for a consideration of Rs.18,00,000/- (Rupees Eighteen Lakhs Only) financed by HDFC Ltd., Hyderabad. The Vendor hereby admit and acknowledge the receipt of the said consideration in the following manner”

**3.3.** Further Annexure 1-A of the above cited sale deed dated 10.09.2012 indicates the following details

**ANNEXURE-1-A**

- Description of the Building: ALL THAT PIECE AND PARCEL OF SEMI-FINISHED HOUSE on bearing Plot No. 09 in the project known as "BLOOMDALE" forming part of Sy. No. 1139 of Shamirpet Village, Shamirpet Mandal, Ranga Reddy District.
  - (a) Nature of the roof : R. C. C.(G+1)
  - (b) Type of Structure : Framed Structure
- Age of the Building: Under Construction

**3.4.** Identical details are incorporated in all other Sale deeds in respect of other Customers.

**3.5.** In view of the above facts it appeared that what is transferred by way of sale deed is a semi-finished construction and not merely land. However it was observed that M/s KMH have erroneously claimed exemption for the entire value indicated in the sale deed. The value cost of construction of these semi-finished houses is to be arrived by deducting from sale deed

value, the cost of land which is to be arrived at proportionately based on the values of identical lands.

**3.6.** As mentioned in Para 3 (detailed in annexures enclosed to the notice) above the cost of construction includes the cost of providing common amenities also. The cost of common amenities have to be arrived at as detailed in Para 2.20 (detailed in annexures enclosed to the notice) above and appeared to be chargeable to full rates of Service Tax.

**3.7.** In view of the foregoing, in respect of Customers mentioned in Enclosure WS-2 to the notice, it appeared that M/s KMH is liable to discharge service tax for Cost of construction in respect of value of semi finished houses shown in the "Sale deed" and value shown in agreement of Construction, under Works Contract Service. They appeared to be liable to service tax on the full value of Common amenities without any abatement at full rate. The cost of land arrived proportionately based on identical lands of customers appeared exempt from service tax.

**3.8.** Accordingly the service tax liability was arrived villa wise and detailed in Annexures enclosed to the notice. Further the villa wise Year wise and Service wise liability was detailed in Enclosure WS-3 & WS-4 to the notice.

**3.9.** The total service tax payable for both **Enclosure WS-1** and **Enclosure WS-2** customers together worked out to Rs.14,35,330/- in respect of site formation service, Rs.40,80,581/- in respect of works contract service, Rs.7,01,784/- in respect of other taxable services totaling to Rs.62,17,785/. M/s KMH have paid an amount of Rs.19,00,736/- during the period from October 2010 to March 2015 and the differential amount payable worked out to Rs.43,17,049/- .

**4.** Service Tax under Works Contract Service has been arrived @ 4.12% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 issued vide Notification No.32/2007- ST dated 22.5.2007 for

the period 01.10.2010 to 31.03.2011 as the value of goods and materials consumed in the project could not be arrived as provided under Rule 2A and 3 of the Service Tax (Determination of Value) Rules, 2007.

**4.1** Service Tax under Works Contract has been arrived @ 40% of the consideration received for rendering the services for the period from 01.04.2012 to 31.03.2015 as per the provisions of Section 2A [(ii)(A)] of the Service Tax (Determination of Value) Rules, 2007 as the value of the goods and materials consumed in the project could not be provided by the declarant.

**5.** By their acts of omission and commission as above, it thus appeared that M/s. KMH had contravened the various provisions of Finance Act, 1994 and the Service Tax Rules, 1994, with an intent to evade payment of Service Tax as follows:

- (i) Section 73A(1) of the Finance Act 1994 (hereinafter referred to as the Act) in as much as they have not paid the service tax collected from the customers completely.
- (ii) Section 65A(2)(a) of the Finance Act, 1994 inasmuch as they have not classified their services of construction of villas under "Works Contract service" during the period from October 2010 to September 2011" under Section 65 (105) (zzzza) and not classified the service of land development under Site formation Service under Section 65 (105)(zzza) from October 2010 to 30.06.2012.
- (iii) Section 67 of the Finance Act 1994 read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006, inasmuch as they have not assessed correct values and not paid proper service tax on amounts received pertaining to the "Works Contract Service" during the period October 2010 to March 2015 and on site formation service from October 2010.
- (iv) Section 68 (1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules 1994 inasmuch as they had not paid appropriate Service Tax under "Works Contract Service", "Site formation Service and Other taxable service on the considerations received for the services rendered.

(v) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they have not filed the statutory Returns under "Works Contract Service" during the period October 2010 to March 2012. And under Site formation Service from October 2010 and not assessing the taxable values correctly.

**6.** M/s Kadakia & Modi Housing have been rendering taxable services under the category of "Works Contract Services" and site formation service however they have not paid the of service tax charged and collected from the customers to the account of the Central Government properly during the period from October 2010 to March 2015. They had not discharged service tax on site formation service and they had not discharged service tax on works contract service by undervaluing the services they had not discharged service tax on the total value of common amenities. These facts have been suppressed from the Department and would not have come to its notice but for the investigation conducted. Therefore, it appeared that the assessee has intentionally suppressed the facts to evade the payment of service tax. Hence, it appeared that the period of limitation under proviso to Section 73 (1) is invokable to recover the short paid/not paid service tax along with interest under Section 75 of the Finance Act, 1994. The assessee appeared to be liable for penalty under Section 78 of the Finance Act, 1994 for suppression of facts, with an intent to evade payment of Service Tax

**7.** In view of the foregoing, a notice vide O.R. No.99/2016-Adjn.(ST) (Commr), HQPOR No.10/2016-ST-AE-VIII dated 22.04.2016 was issued to M/s. Kadakia & Modi Housing asking them to show cause to the to the Commissioner of Service Tax, Service Tax Commissionerate, as to why:

(i) An amount of Rs.14,35,330/- (Rupees Fourteen Lakh Thirty Five Thousand Three Hundred Thirty Only) (including all cesses) being the service tax payable on Site formation Service (as per Enclosure WS-5 read with WS-3 & WS-4 to the notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73 (1) of the Finance Act, 1994;

- (ii) An amount of Rs.40,80,581/ - (Rupees Forty Lakh Eighty Thousand Five Hundred Eighty One Only) (including all cesses) being the service tax payable on Works Contract Service (as per Enclosure WS-5 read with WS-3 & WS-4 to the notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73 (1) of the Finance Act, 1994;
- (iii) An amount of Rs.7,01,874/- (Rupees Seven Lakh One Thousand Eight Hundred Seventy Four Only) (including all cesses) being the service tax payable on other taxable Services (as per Enclosure WS-5 read with WS-3 & WS-4 to the notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73 (1) of the Finance Act, 1994;
- (iv) An amount of Rs.19,00,736/- (Rupees Nineteen Lakh Seven Hundred Thirty Six Only) paid towards service tax (as per Enclosure WS-5 to the notice) should not be appropriated towards the service tax demanded at Sl No (i) to (iii) above;
- (v) Interest as applicable, on an amount at Sl.No (i) to (iii) above should not be paid by them under Section 75 of the Finance Act, 1994;
- (vi) Penalty should not be imposed on the amount at Sl. No. (i) to (iii) above under Section 78 of the Finance Act, 1994 for contraventions cited supra;
- (vii) Penalty should not be imposed under Section 77(2) of the Finance Act, 1994 for delayed Registration.

**8.** Personal hearing was granted to the assessee on 28.12.2016. Shri Venkata Prasad, Chartered Accountant, on behalf of M/s. Kadakia & Modi Housing, appeared for the personal hearing and filed their written submissions dated 28.12.2016 and reiterated the same. He further submitted that an amount of Rs.19,00,736/- was paid by them before issue of the Show Cause Notice. Hence, he requested the same may be considered while imposing a penalty.

**9.** The Show Cause Notice O.R. No.99/2016-Adj.(ST)(Commr) HQPOR No. 10/2016-ST-AE-VIII dated 22.04.2016 was assigned for adjudication to

the Joint Commissioner, Hyderabad-I Commissionerate vide letter C.No. IV/16/156/2065-CC(HZ) Tech dated 07.12.2016 by the Chief Commissioner, Hyderabad Zone in terms of Notification No. 06/2009-ST dated 30.01.2009. Accordingly, corrigendum dated 20.10.2016 and 05.12.2016 were issued asking the assessee to show cause to the adjudicating authority for the subject notice.

**10.** The above said Show Cause Notice O.R. No.99/2016-Adj.(ST)(Commr) HQPOR No. 10/2016-ST-AE-VIII dated 22.04.2016 was adjudicated vide Order In Original No.48/2016-(S.T) dated 30.12.2016 by the Joint Commissioner of Central Excise and Service Tax, erstwhile Hyderabad I Commissionerate, Hyderabad and passed the following orders:

- (i) I confirm the demand of Rs.14,35,330/- (Rupees Fourteen lakhs thirty five thousand three hundred thirty Only) (including all cesses) in the service tax payable on Site formation Service during the period October 2010 to March 2015 from them, under proviso to Section 73 (1) of the Finance Act, 1994;
- (ii) I confirm the demand of Rs.40,80,581/- (Rupees Forty lakhs eighty thousand five hundred and eighty one Only) (including all cesses) being the service tax payable on Works Contract Service during the period October 2010 to March 2015 from them, under proviso to Section 73 (1) of the Finance Act, 1994;
- (iii) I confirm the demand of Rs.7,01,874/-(Rupees seven lakhs one thousand eight hundred and seventy four Only) (including all cesses) being the service tax payable on other taxable Services during the period October, 2010 to March, 2015 from them, under proviso to Section 73 (1) of the Finance Act, 1994;
- (iv) I appropriate amount of Rs.19,00,736/- (Rupees Nineteen lakhs seven hundred and thirty six only) paid towards service tax towards the service tax demanded at SI No (i) to (iii) above;
- (v) I confirm the demand of Interest as applicable, on the amounts at SI.No. (i) to (iii) above under Section 75 of the Finance Act, 1994;

(vi) I impose equivalent Penalty of Rs.62,17,785/- (Rupees Sixty two lakhs seventeen thousand seven hundred and eighty five only) on the amounts at SL No. (i) to (iii) above under Section 78 of the Finance Act, 1994 for contraventions cited supra;

(vii) I impose Penalty of Rs.10,000/- (Rupees Ten thousand only ) under Section 77(2) of the Finance Act, 1994 for delayed Registration

**11.** Aggrieved by the above said Order-in-Original, the assessee preferred an appeal before the Commissioner (Appeals), Hyderabad. The Commissioner (Appeals) passed Order in Appeal No.HYD-SVTAX-000-AP2-0210-17-18-ST dated 14.09.2017 and the case was reminded back to the original authority.

**12.** The above said Order in Appeal was reviewed by the department and found that the Order in Appeal is not proper, correct and legal. Hence, the department filed an appeal before Hon'ble CESTAT, Hyderabad, vide Appeal No.ST/30115/2018, seeking to:

- (i) set aside the impugned Order in Appeal No. HYD-SVTAX-000-AP2-0210-17-18-ST dated 14.09.2017 and to confirm the demand proposed in the Order in Original No.48/2016-(S.T) dated 30.12.2016 along with interest and penalties as per the provisions of law; or
- (ii) pass any suitable orders, as deemed fit.

Subsequently the said appeal is withdrawn by the department on monetary grounds and allowed by the Hon'ble CESTAT vide Final Order No. A/30981-30986/2019 dated 25.10.2019.

**13.** For further period i.e. from April 2015 to June, 2017, a periodical Show Cause Notice was also issued by the Assistant Commissioner in file No. V/24/15/03/2018-Adjn dated 16.04.2018, wherein it was directed to the assessee to show cause to the Assistant Commissioner, Secunderabad Commissionerate, as to why:

- (i) an amount of Rs.14,48,436/- (Rupees Fourteen Lakh Forty Eight Thousand Four Hundred Thirty Six Only) (including cesses) should not be demanded as per para-4 of the notice towards "Works Contract Service" rendered by them during April, 2015 to June, 2017 in terms of Section 73(1) of the Finance Act, 1994;
- (ii) Interest should not be demanded at (i) above under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for the contravention of Rules and Provisions of the Finance Act, 1994;
- (iv) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994.

**14. Personal Hearing:** In the above said both cases, personal hearing was fixed on 08.12.2023, 18.12.2023 and 10.01.2024. Shri Mohammad Shabaz, Advocate, authorised representative of M/s. Kadakia & Modi Constructions had appeared for personal hearing on 10.01.2024. During the personal hearing he requested time till 16.01.2024 to submit proof. Further he had requested to expedite the order. The authorised representative vide his letter dated 16.01.2024 stated that due to Pongal holidays from 14.01.2024 to 16.01.2024, the appellant was not available to share the required supporting documents. Hence, he requested to provide 10 more days of time for filing the submission for which he requested time during personal hearing held on 10.01.2024. But he did not make any submission.

#### **DISCUSSION AND FINDINGS:**

**15.** I have gone through the Show Cause Notice dated 22.04.2016 passed by Commissioner, Show Cause Notice dated 16.04.2018 issued by Assistant Commissioner, Order In Original No.048/2016-(S.T) dated 30.12.2016, Order In Appeal No.HYD-SVTAX-000-AP2-0210-17-18-ST Dated 14.09.2017, Hon'ble CESTAT vide Final Order No. A/30981-30986/2019 dated 25.10.2019, their submission dated 28.12.2016, Oral/written submission made by the assessee and documents/information available on

records. I would like to draw attention towards the withdrawal of appeal filed before Hon'ble CESTAT by the department. The department had not accepted the Order In Appeal passed by Commissioner (Appeal) in this case and they preferred appeal before Hon'ble CESTAT. Later on the department had withdrawn the appeal on monetary ground. Thus, the department had not accepted the said Order in Appeal on merit basis. Further, on same ground, another Show Cause Notice for further period i.e. from April, 2015 to June, 2017 was issued to the assessee by Assistant Commissioner. Hence, I proceed to decide the both Show Cause Notices together. The main issue to be decided before me is that whether the demand of service tax on the services "Works Contract Services" and "Site Formation Services" is proper and the services are properly classified and the assessee are liable to pay the same or not.

**16.** It is alleged in the notice that the assessee failed to assess tax properly and misclassified the services under "Residential Complex Services" instead of classifying the same under "Works Contract Services" during the year 2011-12 and later they classified the same under "Works Contract Services" and paid tax liability accordingly. It was further alleged that they failed to file return for the period from October, 2010 to March, 2011 and thus not paid service tax liability during this period. It was alleged that the assessee entered into agreements with the buyers for sale of land, development charges for laying of roads, drains and parks etc., and towards cost of construction that include water and electricity connection and for other amenities. It was alleged in the impugned notices that the cost of "Land development charges" were not included in the cost of construction in some cases and partially included in some cases. It was alleged in the notice that the assessee failed to classify "Land Development Charges" under any of the category of services and hence the same are classified under "Site Formation Services". It was alleged in the notice that the cost of land development charges are not included in the cost of construction in respect of some of clients/customers and included in some cases. The activity involved, inter-alia, in the land development is preparation of site suitable

for construction, for laying of roads, drainage and for water pipes etc. Thus, it was alleged as a separate activity different from construction of villas. It was alleged in the notice that the activity was classified under "Site Formation Services" for the reason that the activity did not involve transfer of property and from the insertion of negative list in terms of Section 66B of the Finance Act, 1994 the services relating to land development charges were not listed in the negative list and thus taxable. It was further alleged that under the guise of sale of land, semi-finished villas were also sold by claiming exemption by treating these type of transactions as sale of land and underpaid the service tax on these transactions. The amount of service tax is alleged to be payable in this type of transactions and demand was made accordingly. It was further alleged that service tax on other services provided in connection with construction of villas was also not paid by the assessee. They contravened various sections of Finance Act, 1994 and each contravention is specified in the both notices. Hence, service tax liability of Rs.14,35,330/- under Site Formation Services, Rs.40,80,581/- under Works Contract Services and Rs.7,01,874/- under Other Taxable Services was arrived at and demanded in the Show Cause Notice OR No.99/2016-Adjn.(ST) (Commr) dated 22.04.2016. And for further period i.e. from April, 2015 to June, 2017, service tax liability of Rs.14,48,436/- under Works Contract Services was arrived at and demanded in the Show Cause Notice file C. No.V/24/15/03/2018-Adjn, dated 16.04.2018.

**17.** The assessee in their written reply submitted at the time of personal hearing held on 28.12.2016 contested that sale of land in the absence of proper mechanism for identification of service element is not taxable and relied on the case Suresh Kumar Bansal Vs. UOI 2016 43 S.T.R. 3 (Del.) and contested that construction of Villas cannot be subjected to Service tax at all as the construction of villas cannot be treated as residential complex as villa is not a building containing more than 12 units.

**18.** Further it was contested that the Villas constructed are being used for personal use and falls under the exclusion portion of the definition of the

"Residential complex" defined u/s 65(91a), *ibid.* hence no service tax. Relied on CBEC circular 108/2/2009-S.T., dated 29.01.2009 and M/s Virgo Properties Pvt Limited Vs CST, Chennai 2010-TIOL-1142-CESTAT-MAD; For period 01.07.2012 onwards, same is exempted under entry No. 14(b) of Notification No. 25/2012 ST dated 20.06.2012 as amended; and referred Macro Marvel Projects Ltd. v. Commissioner — 2008 (12) S.T.R. 603 (Tribunal) maintained by SC in 2012 (25) S.T.R. J154 (S.C.); and CBEC circular 108/2/2009-S.T dated 29.01.2009.

It is observed from the definition of "Residential complex" that M/s KMH misconstrued the definition in his favor and tried to overlook the definition for the benefit service tax. Extracts of the definition are reproduced here under

**Section 65 (91a)** "residential complex" means any complex comprising of

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

**Explanation.** - For the removal of doubts, it is hereby declared that for the purposes of this clause, —

- (a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;
- (b) "residential unit" means a single house or a single apartment intended for use as a place of residence;]

It is clear from the above definition that residential unit means a single house or a single apartment intended for use as a place of residence and as per the definition the project "Bloomsdale" met all the parameters of the

definition such it consisted more than 12 units with common areas and facilities such as parking places, parks and water supply etc. It is evident that M/s KMH are falsely contesting the issue for the sake of escaping the service tax liability on the construction activities undertaken by them in "Bloomsdale " project. The case laws relied upon by them are not factually applicable as the facts are different and distinguishable with the facts of the present issue before me. Hence the tax demanded under works contract services is correct and liability demanded in the notice is payable by them.

**19.** M/s KMH contested that "**Land development charges**" are not falling under "site formation and clearance, excavation and earthmoving and demolition" as none of the works specified in the definition were carried out by them in the Bloomsdale project. It was also contested that the services do not even fall under works contract service and stated that there is no liability of service tax on the services such as electrical cabling, laying roads, drainage lines, water lines etc. It was stated that both labour and material are involved in these activities. It was contested that the notice was issued with baseless allegation that the services provided such as electrical cabling, laying roads, drainage lines, water lines fall under "site formation and clearance, excavation and earthmoving and demolition". They contested that the notice is issued without any merit and needs to be quashed and relied upon the case Crystic Resins (India) Pvt. Ltd., Vs CCE, 1985 (019) ELT 0285 Tri.-Del and United Telecoms Limited vs. CCE, Hyderabad-2011 (21) S.T.R. 234 (Tri-Bang). I find that these case laws are delivered with different factual situations and hence are distinguishable with the facts of the present case.

**20.** Further to afore said contentions, M/s KMH further contested that taxability question arises only when site formation is done independently not as a part of composite contracts and relied on the Board's circular 123/5/2010-TRU, dated 24-5-2010. In this connection I observe that the contents of the circular are misconstrued by the assessee in their favour as the issue dealt in the circular dealt with laying of cable along the roadside. In the present case the services are not mere laying of cables alone and

hence the assessee's contention is not tenable. The assessee vehemently argued that the agreements such as "sale of land", "land development charges" and "construction charges" are mutually co-existing and inseparable and the activity of land development is not a "site formation service" if taken as a part of composite work and relied on few judgements *M. Ramakrishna Reddy v. CCE & Cus, Tirupathi 2009 (13) S.I.R. 661 (Tri-Bang)*; *Commissioner v. Vijay Leasing Company - 2011 (22) S.T.R. 553 (Tribunal)*.

**21.** Assessee further contested in their reply that the impugned "land development services" shall be treated as species of "works contract" and relied upon various case laws in support of their view. It was stated that common amenities were constructed with the material such as murram, concrete and electrical poles, electrical wiring etc., and used labour and transferred the property in goods to their customers and hence satisfies the definition of "works contract services". The definition of works contract is reproduced hereunder

(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

**Explanation.** - For the purposes of this sub-clause, "works contract" means a contract wherein,-

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out, —

(a) erection, commissioning or installation of plant, machinery, equipment or pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating or ventilation or air-conditioning including related pipe work, ductwork and sheet metal work, thermal insulation, sound insulation, fire proofing or waterproofing, lift, escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

- (c) construction of a new residential complex or a part thereof; or
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
- (e) turnkey projects including engineering, procurement and construction or commissioning EPC projects;

**22.** From the above definition it clearly manifested that in order to classify "Land development charges" under "Works Contract services" two conditions are required to be satisfied 1<sup>st</sup> there should be transfer of property in goods and the activities to be performed under (a) to (e) listed in the definition. Hence the common area and amenities even though constructed with murrum and concrete and usage of labour it is not transferred in goods to any individual and the common area and amenities are used by the group of individuals and hence the same cannot be treated as species of "Works contract services". In fact this is the allegation leveled against them in the notice. The assessee submitted that there is a transfer of property in goods in respect of common amenities provided and the amounts collected under "land development services" as they said that they paid VAT on these charges and hence it is a species of "Works Contract services". Again in their written reply it is again contested that (vide para 23 onwards) Land development services are not at all covered under any of the works defined under " Works contract services" and hence the land development services do not fall under works contract services and referred to Apex court case law Supreme court decision in CCE v. Larsen and Toubro Ltd 2015 (39) S.T.R. 913 (S.C.). It is noted that the assessee lacks clarity on his submissions as they say that the land development services do not fall under " site formation services" and they say that it forms species of "works contract service and again they say that it is not a works contract services as none of the works specified in the works contract service was performed for land development activities. Again vide para 34 of their reply they requested that if at all land development services are to be treated as taxable the same may be classified under Works contract and requested to extend the benefit of abatement or benefit of paying @ 4.8% in terms of Works Contract

(Composition Scheme for Payment of Service Tax) Rules, 2007 - as it is specie of works contract. Further they contested that the construction of common amenities involves the transfer of property and it is "works contract" service only and claimed that they correctly assessed at abated rates. They further argued that if land development charges are taxable, adopting the principles of Bundled service' u/s. 66F of Finance Act, 1994, same shall be construed as works contract and tax shall be levied only @40% on the amount received in terms of Rule 2A of Service tax (determination of value) Rules, 2012.

**23.** From the above submissions and contentions it is noticed that they lack clarity and trying to negotiate tax liability and circumvented the issue with divergent contentions and relying on irrelevant case laws. It is noticed that they wish to scheme on service tax liability as much as possible with illogical contentions. I find that in terms of Section 65 A, services are classified with more relevant descriptions of services. Extracts of Section 65A are reproduced here under

**Section 65 A : Classification of taxable services.** - (1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65;.

(2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub- clauses of clause (105) of section 65, classification shall be effected as follows :-

- (a) the sub-clause which provides the most specific description shall be preferred to sub- clauses providing a more general description;
- (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;
- (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.]

[(3). The provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.]

**23.1** In terms of 65(A) 2(a) "land development services" gives more specific description under "Site formation and clearance, excavation and earth moving and demolition" service and the works involved are leveling the land and making it suitable for construction of villas and horizontal drilling for laying of drainage lines and water pipes and cables etc., apart from constructing common amenities such as park, current poles and club houses. Since majority works involved are relatable to "Site formation and clearance, excavation and earth moving and demolition" services, the land development services are rightly classified under the same. As requested by the assessee, land development services cannot be classified either under "residential complex services" or under "works contract services" ( after 1/7/2007) as they collected charges under "land development services" separately and hence are rightly classifiable under "Site formation and clearance, excavation and earthmoving and demolition" services. In this context I rely upon the case Alokik Township Corporation Versus Comm. Of C. Ex. & S.T., Jaipur-I (Tri. - Del.) 2015 (37) S.T.R. 859 Demand - Land Development for housing project - Demand raised under Construction of Complex service upto 30-5-2007 and under Works Contract service category w.e.f. 1-6-2007 - HELD : Development of land for township not covered by definition of Construction of Commercial Complex service in Section 65(105)(zzzh) read with Sections 65(39a) and 65(91a) of Finance Act, 1994 or by definition of Works Contract service in Section 65(105)(zzzza) ibid - Service Tax demand not sustainable - Impugned order set aside - Sections 65(39a), 65(91a) and 65(105/zzzza) of Finance Act, 1994.

**24.** Hence in view of the above the land development services cannot be classified either under "Construction of Complex service" or under "Works Contract service". I also find that from the definition under Section 66F of the Finance act, 1994 the entire set of services under "land development

services" should be bundled under service that is "Site formation and clearance, excavation and earthmoving and demolition" services. Relevant extracts of Section 65 F are reproduced hereunder

**SECTION [66F. Principles of interpretation of specified descriptions of services or bundled services.** - (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing the main service.

**[Illustration**

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is liable to service tax.]

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely :

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

**Explanation.** - For the purpose of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.]

It is imperative from the above Section that "land developments services" shall be treated as single service due to its nomenclature and essential characteristics even though it contains various elements. Hence the demand under Site formation and clearance, excavation and earthmoving and demolition is correctly set in the notice and I confirm the tax liability under the same.

**25.** From the main demand under "works contract services", it is noticed that the assessee undervalued the services charges by not including cost of construction of semi-finished units by claiming the same as sale of land and thereby claimed ineligible exemption. The contentions of the assessee that (para 30) that "undivided portion of land along with semi-finished villa/ house is not chargeable to VAT and it is mere sale of immovable property" and cited the judgment *Larsen and Toubro Limited v. State of Karnataka* - 2014 (34) S.T.R. 481 (S.C.). The assessee again scheming with irrelevant arguments that no service tax is payable on these transactions as it was not falling under "works contract services". I find that there is no basis in their argument and the definition is totally misconstrued in their favour to get benefit from paying service tax. I confirm the tax liability demanded in the notice under "works contract service".

**26.** The contention by M/s KMH that the demand of service tax in respect of "other services" is not tenable in the notice as it was claimed that the amounts were received towards Corpus fund, Electricity deposit, water charges and towards service tax. However it was observed that the assessee failed to submit documentary evidence in support of their claim and hence cannot be considered as non-taxable. After personal hearing held on 10.01.2024 also they did not submit the same. Hence, in the absence of any documentary backing the amounts collected for other services are taxable and I hold that tax is payable on these charges. In this connection I rely on the judgment of Delhi High Court in the case *Gokaldas Images Ltd Vs Union Of India* reported in 2007 (7) S.T.R. 347 (Del.) where in Delhi High Court held that:

WP (C) No. 5916/2003: *The grievance of the petitioner is that the quota could not be utilized due to power cut and the appeal was heard on 5-11-1998 by the first appellate authority while the order was passed in January, 2000 and signed on 15-11-2000. There is undoubtedly delay on the part of the first appellate committee in passing the order but the matter has also been considered by the second appellate committee and the petitioner had failed to file necessary documentary evidence. Thus, I see no reason to interfere in this case.*

(xv) WP (C) No. 16102/2004: *The plea is frequent power failure in Okhla Industrial Area and the priating job at Jodhpur being affected due to cold weather and less sunshine. No documentary evidence was produced and the findings were, thus, correctly arrived at the first appellate committee and the second appellate committee rejecting the plea of the petitioner. Thus, the matter, in my considered view, calls for no interference.*

(xvii) WP (C) No. 13154/2004: *The petitioner has pleaded frequent court/customs strike and load shedding by the electricity authority. Documentary evidence was not produced and additional pleas were sought to be added before the second appellate committee, which has considered all the matters and rejected the same which, in my considered view, do not call for any interference.*

**27.** M/s KMH contended that in case the demand is confirmed, they may be given the benefit of cum-tax under section 67(2) of Finance Act, 1994 and relied on various case laws in their favour. It is observed that the assessee have not collected values including service tax element in many cases. They collected service tax separately and are filing returns. They are aware of the statutory provisions and are billing service tax separately wherever they collected towards taxable services. Hence in some cases separate collection of taxes and in some cases cum tax benefit cannot be the practice. In fact the demand notice was issued against them as they suppressed the facts of receipt of taxable amounts with intent to evade payment of taxes and claiming ineligible exemptions. In this context I rely upon the following case law

**The Settlement Commission in the case of M/s TIRUCHENGODE LORRY URIMAIYALARGAL SANGAM,** reported in 2016 (41) S.T.R (343) (Settle Comn)( Chennai) held that *"The Commissioner conceded that the claim of exemption from Service Tax on the rent collected for the vacant land prior to 30-6-2010, was correct in law subject to production of documentary evidences. He further stated that threshold exemption of Rs. 8/10 lakhs in terms of Notification No. 6/2005-S.T., dated 1-3-2005 and Notification No. 33/2012-S.T., dated 20-6-2012 is applicable only for the aggregate value of all such taxable services. Since the aggregate turnover was more than 8/10 lakhs in the preceding Financial Years for all the services provided by the applicant, they are not eligible for exemption. In respect of claim for cum-tax benefit the Commissioner stated that the applicant did not initiate any effort to recover Service Tax element from their service receivers and in such scenario extending the benefit of cum- tax benefit does not arise and mere failure on the part of the applicant to collect Service Tax separately from their service receivers and later claiming cum-tax benefit would result in the deprival of legitimate revenue due to the Government"*

In view of the above case law I find that their request for cum-tax benefit can not be considered and extended.

**28.** M/s KMH contested that Interest and penalties ate not imposable as extended period is not invokable in theirs case and stated that they paid an amount of Rs.19,00,736/- and the same amount was only payable and paid the same with in the statutory time and burden to prove imposition of penalty was not discharged by the department and relied on a case law Indian Coffee Workers' Co-Op. Society Ltd Vs C.C.E. & S.T., Allahabad 2014 (34) S.T.R 546 (All) and further stated that it involved interpretation of law and hence penalties are not imposable and relied on CCE Vs Gujarat Narmada Fertilizers Co. Ltd 2009 (240) E.LT 661 (S.C) in support of their contention. In this regard it was stated by them that they are new to service tax provisions and requested benefit under Section 80 of the Finance Act, 1994. I find that their contentions are not acceptable as they were registered

with the department and were discharging tax liability and filing, but for allegations made in the notice, ST-3 returns regularly.

**ERECON Versus COMMISSIONER OF SERVICE TAX, AHMEDABAD reported in 2016 (41) S.T.R. 538 (Tri. - Ahmd.)** *"Heard both sides and perused the case records. Appellant was discharging tax liability up to September, 2004 and thereafter stopped making the payment of Service Tax No ST-3 returns was filed by the appellant after September, 2004. Once appellant was aware of the fact that service tax on the services provided was paid earlier, it cannot be considered that there was no intention to evade payment of tax by suppression when appellant was not even filing the statutory returns of the tax which he was paying earlier. Accordingly, it is held that penalties under Section 78 of the Finance Act, 1994 is imposable. The case laws relied upon by the appellant are distinguishable on facts and are not applicable to the facts and circumstances of this case".*

**FREE LOOK OUTDOOR ADVERTISING Versus COMMR OF CUS. & C. EX., GUNTUR 2007 (6) S.T.R. 153 (Tri.- Bang.)**

*Demand (Service tax) - Limitation - Failure to file return - It was sufficient for invocation of extended period when there was no time limit for recovery of dues as per Section 73 of Finance Act, 1994. [para 5.1]*

**BOX & CARTON INDIA PVT. LTD. Versus COMMISSIONER OF C. EX., DELHI-IV 2008 (228) E.I.T. 85 (Tri. - Del.)** *"Demand - Limitation - Extended period - Plea that Departmental officers visited the units on 27-3-2003 and SCN issued on 1-9-2004 for duty demand for short paid duty for period from 1-8-1999 to 31-3-2004 and duty demand for period from 27-3-2003 to 31-7-2003 time barred - Tribunal decision in 1999 (114) E.L.T: 429 (Tribunal) holding that knowledge of department in respect of suppression of facts not relevant for computing limitation period of five years - Demand sustainable - Section 11A of Central Excise Act, 1944."*

**29.** In the light of the above judgments I reject the plea of the assessee that extended period is not invokable as the full facts were voluntarily disclosed by them without any inquiry from the departmental authorities

and claim that they had not hidden any fact from the officers of the department is not acceptable and tenable. They have provided the information only after initiation of investigation by the department and it was discovered that the assessee were misclassifying their services with intent to evade payment of service tax. Since the assessee are aware of statutory provisions and have been collecting service tax and not paying the same to the exchequer and they have hidden these facts to the department and they are liable to pay a penalty equal to the amount of service tax short paid/not paid by them. The information was provided only after initiation of investigation against them and hence I do not find that they have recorded the information in the specified records as the issue is intent to evade payment of tax by misclassifying the services and as well suppressing the facts. Hence extended period is rightly invoked in the case.

**30.** Assessee requested to consider the benefit under Section 80 of the Finance Act, 1994. It is observed that they have not shown any reasonable cause to consider their request for benefit under Section 80 of the Finance Act, 1994. Hence the request of the assessee for benefit under Section 80 is rejected for the aforesaid reasons. In this connection I rely on the following case law in support of my view.

**Gitanjali Gems Ltd. Vs Commissioner of Service Tax, Mumbai-I** reported in 2016 (43) S.T.R. 230 (Tri. - Mumbai) where in it was held that

*"As regards the plea of the learned counsel for the appellant for setting aside the penalty imposed, on a specific query from the bench, it was stated that the appellant has not paid the entire amount of the service tax liability and the interest thereof. The appellant has only paid 50% of the amount of service tax liability. We find that the provisions of Section 80 cannot be invoked in this case as there being no discharge of service tax liability and interest thereof the penalty imposed on the appellant needs to be upheld as there is no justifiable reason or cause shown for setting aside the penalties"*

**COMMISSIONER OF SERVICE TAX, MUMBAI Versus LARK CHEMICALS P. LTD. 2016 (42) S.T.R 417 (S.C.)** "Penalty - Quantum of - Reduction under Section 80 of Finance Act, 1994 - Scope of - In view of judgment of Apex Court

*in Dharamendra Textile Processors at 2008 (231) E.L.T. 3 (S.C.), penalties imposed under Sections 76 and 78 ibid not reducible under Section 80 of Finance Act, 1994".*

**31.** In view of the above discussions and findings I pass the following order:

**ORDER**

**(A) Show Cause Notice OR No. 99/2016-Adjn.(ST) (Commr) dated 22.04.2016:**

**(i)** I confirm the demand of **Rs.14,35,330 /-** (**Rupees Fourteen Lakh Thirty Five Thousand Three Hundred Thirty Only**) (including all cesses) in the service tax payable on Site formation Service during the period from October 2010 to March 2015 from them, under proviso to Section 73 (1) of the Finance Act, 1994;

**(ii)** I confirm the demand of **Rs.40,80,581/-** (**Rupees Forty Lakh Eighty Thousand Five Hundred Eighty One Only**) (including all cesses) being the service tax payable on Works Contract Services during the period from October 2010 to March 2015 from them, under proviso to Section 73 (1) of the Finance Act, 1994;

**(iii)** I confirm the demand of **Rs.7,01,874/-** (**Rupees Seven Lakh One Thousand Eight Hundred Seventy Four Only**) (including all cesses) being the service tax payable on other taxable Services during the period from October, 2010 to March, 2015 from them, under proviso to Section 73 (1) of the Finance Act, 1994;

**(iv)** I appropriate an amount of **Rs.19,00,736/-** (**Rupees Nineteen Lakh Seven Hundred Thirty Six Only**) paid towards service tax demanded at SI No (i), (ii) and (iii) above;

**(v)** I confirm the demand of Interest as applicable on the amounts demanded at SI.No. (i), (ii) and (iii) above under Section 75 of the Finance Act, 1994;

(vi) I impose a penalty of **Rs.62,17,785/- (Rupees Sixty Two Lakh Seventeen Thousand Seven Hundred Eighty Five Only)** equivalent to the tax demanded at Sl. No. (i), (ii) and (iii) above under Section 78 of the Finance Act, 1994 for contraventions cited supra;

(vii) I impose a penalty of **Rs.10,000/- (Rupees Ten Thousand Only)** under Section 77(2) of the Finance Act, 1994 for delayed Registration.

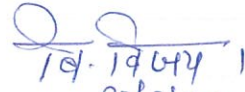
**(B) Show Cause Notice C. No. V/24/15/03/2018-Adjn dated 16.04.2018 issued by Assistant Commissioner, Secunderabad Division, Secunderabad GST Division:**

(a) I confirm the demand of **Rs.14,48,436/- (Rupees Fourteen Lakh Forty Eight Thousand Four Hundred Thirty Six Only)** (including cesses) being the service tax payable towards 'Works Contract Services' during the period from April, 2015 to June, 2017 from them, in terms of Section 73(1) of the Finance Act, 1994;

(b) I confirm the demand of Interest as applicable on the amount demanded at Sl. No. (a) above under Section 75 of the Finance Act, 1994;

(c) I impose a penalty of **Rs.1,44,844/- (Rupees One Lakh Forty Four Thousand Eight Hundred Forty Four Only)** being ten percent of the tax demanded at Sl. No.(a) above under Section 76 of the Finance Act, 1994 for contravention of Rules and Provisions of the Finance Act, 1994;

(d) I impose a penalty of **Rs.10,000/- (Rupees Ten Thousand Only)** under Section 77 of the Finance Act, 1994.



28/3/24

(B. VIJAY)

**ADDITIONAL COMMISSIONER**

To

M/s Kadakia & Modi Housing,  
5-4-187/3 & 4, 2<sup>nd</sup> Floor,  
Sohan Mansion, M.G. Road,  
Secunderabad- 500003.

(Through Range Officer)

Copy submitted to the Commissioner of Central Tax & Central Excise, Secunderabad Commissionerate, Hyderabad.

**(Kind Attn.: Superintendent, Review)**

Copy to:

1. The Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad Commissionerate, Hyderabad, **with a direction to ensure the serving of this OIO to the assessee.**
2. The Assistant Commissioner of Central Tax, (Arrears), Hqrs. Office, Secunderabad Commissionerate.
3. The Superintendent of Central Tax, Ramgopalpet II Range, Secunderabad GST Division, **with a direction to serve the order on the assessee and forward the dated acknowledgement obtained from them to this office**
4. Master Copy / Spare Copy.

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M/s. Kadakia & Modi Housing,  
S-4-187/3 & 4, 2nd Floor,  
Sohan mansion, M.G. Road,  
Secunderabad - 500003.

From :  
Office of the Commissioner of  
Central Tax & Central Excise  
Secunderabad GST Commissionerate  
GST Bhavan, Basheerbagh, Hyderabad - 500 004.

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