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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH: HYDERABAD
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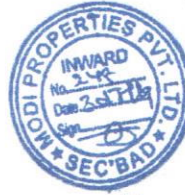
Dated: 16/07/2019

File No. :- ST/27015/2013

In the matter of :-

Alpine Estates
(Appellant as per address below)

Commissioner of Central Tax-
Secunderabad - G S T
(Respondent as per address below)



(Appellant)

Vs

(Respondent)

I am directed to transmit herewith a certified copy of Order No. : A/30699/2019 dated : 19/06/2019 passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Assistant Registrar

S.NO, Case Number, Name & Address of Appellant :-

1 ST/27015/2013 Alpine Estates
5-4-187/3 & 4, 2nd Floor, M.g.road,
SEUNDERABAD
TS-500003

S.NO, Case Number, Name & Address of Respondent :-

1 ST/27015/2013 Commissioner of Central Tax-Secunderabad - G S T
KENDRIYA SHULK BHAVAN,
L.B STADIUM ROAD, BASHEERBAGH
HYDERABAD
TELANGANA-500004

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6. Advocate^(s) / Consultant^(s) / Representative:-

1 ST/27015/2013 Hiregange & Associates Chartered
Accountants (New)
4th Floor, West Block,
Anushka Pride, Opp. Ratnadeep
Supermarket, Road Number -12, Banjara
Hills,
Hyderabad,
Telangana-500034

Assistant Registrar

DB-D-8

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

REGIONAL BENCH - COURT NO - I

Service Tax Appeal No. 27015 of 2013

(Arising out of Order-In-Appeal No. 38/2013 (H-II) ST dated 27.02.2013 passed by
Commissioner of Customs Central Excise & Service Tax (Appeals-II) Hyderabad)

M/s Alpine Estates
5-4-187/3&4, 2nd Floor,
M.G. Road,
Secunderabad 500 003

Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax,**
Hyderabad-II Commissionerate
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheer Bagh, Hyderabad-500004

Respondent

APPEARANCE

Shri V.S. Sudhir, C.A. for the Appellant.
Shri B. Natesh Authorised Representative for the Respondent.

**CORAM: HON'BLE Ms SULEKHA BEEVI C.S. MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER
(TECHNICAL)**



FINAL ORDER No./ 30699 /2019

DATE OF HEARING: 19.06.2019
DATE OF DECISION: 19.06.2019

[ORDER PER: SULEKHA BEEVI C.S.)

Brief facts are that appellants were issued show-cause notice proposing to demand short-paid service tax under works contract service.

2. Learned consultant Shri Sudhir V.S. appearing on behalf of the appellant submitted that the appellants were engaged in construction of residential complexes. During the disputed period, they had entered into

(Handwritten signature)

two separate agreements with the customers. Firstly, the appellant would execute the sale-deed for sale of undivided portion of land together with semi-finished portion of the flat. Thereafter an agreement for construction was entered for completion of construction of the flat. The appellant has discharged the entire service tax liability as per the agreement of construction. The present show-cause notice is issued including the value shown in the sale-deed and also other reimbursable charges in the nature of registration fee etc. It is submitted by him that though the jurisdictional authority has made a categorical finding in para 17 of the impugned order that no service tax has been demanded on the sale-deed value in the light of the Board Circular dated 29.01.2009, at the time of confirmation of demand the said value as per the sale-deed also has been included. He therefore requested that the matter may be remanded so as to requantify the amount after giving the deductions as per the show-cause notice in respect of value shown in sale-deed as well as other reimbursable expenses such as VAT, registration fee etc.

3. Learned A.R. Shri B. Natesh appeared on behalf of the department and argued the matter. He adverted to the amendment brought forth in the definition of residential complex service with effect from 01.07.2010 to argue that whenever an advance is received by the assessee prior to issuance of the completion certificate, the said amount would be taxable and therefore in the present case, the amount in the sale-deed for the period post 01.07.2010 would be taxable. The amount shown in the sale-deed has been rightly subjected to levy of service tax and confirmed by the original authority.

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4. Heard both sides. The finding of the Commissioner in para 17 is reproduced as under:-

" various flats have been sold by them to various customers in two states. First, they have executed a 'sale deed' at semi-finished stage by which the ownership of the semi-finished flats was transferred to the customers. Appropriate stamp duty was paid on sale deed value. No service tax been demanded on the sale deed value in the light of Board's Circular dated 29.01.2009. After execution of sale deed they have entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"

5. After hearing the submissions of learned A.R. we are of the view that the matter requires to be reconsidered as to whether the amounts included in the sale-deed value of immovable property would be subject to levy of service tax under construction services. The computation in the order-in-original has to be looked into on the basis of the sale-deed executed by the appellant with customer which includes the semi-finished flat. Other charges like registration fee, VAT, etc. needless to say will not be subject to service tax as being reimbursable expenses.

6. For the period prior to 01.07.2010, the learned consultant submitted that in the appellant's own case for the earlier period, the Tribunal as reported in 2019 (2) TMI 772 (CESTAT-Hyd) had held as under:-

"5. On careful consideration of the submissions made by both sides, we find that the facts are not much in dispute and the demand is further period January, 2009 to December, 2009 in some cases June, 2007 to December, 2009 in some cases and June, 2005 to February, 2007 in some cases and in some cases June, 2005 to March, 2008. All these demands are in respect of the service tax liability on the builders for the services provided before 01.07.2010. The self same issue was considered by the Bench in detailed in the case of *M/s Mehta & Modi Homes* and as also in the case of *M/s Kolla Developers & Builders* and held that prior to 01.07.2010 service tax liability will not arise on the builders. We do not find any reason to deviate from such a view already taken on the issue. Accordingly, we hold that all the impugned orders are unsustainable and liable to be set aside and we do so. The impugned orders are set aside and the appeals are allowed with consequential reliefs, if any."



7. From the above, we hold that the impugned order is modified to the extent of setting aside the demand prior to 01.07.2010 and remanding the matter after 01.07.2010 to the adjudicating authority for reconsideration. The adjudicating authority in such remand proceedings shall also reconsider the issue of penalty. Appeal is partly allowed and partly remanded in above terms, *with consequential reliefs, if any.*

(Dictated and pronounced in open court)

-sd-

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

-sd-

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy

प्रमाणित प्रति / CERTIFIED COPY

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26.7.19
सहायक पंजीकार / Asst. Registrar
जीमाशुल्क, उत्पादशुल्क और सेवा कर अपील अधिकरण
Customs Excise And Service Tax Appellate Tribunal
हैदराबाद / Hyderabad