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जीएसटी और केंद्रीय कर आयुक्त का कार्यालय अपील-II कमिश्नरेट
सातवा तल, जीएसटी भवन, एलस्टेडियम रोड.बी., बशीरबाग, हैदराबाद 500004 - पिन,
OFFICE OF THE COMMISSIONER OF GST & CENTRAL TAX APPEALS-II COMMISSIONERATE
7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, PIN-500004, TS.
Ph: 040-23234219 e-Mail: cgst.hydappeals2@gov.in

Appeal No.96/2024(SC)DGST

Date:19.09.2024

To
M/s. Alpine Estates,
5-4-187/3 & 4, II Floor, Soham Mansion,
MG Road, Secunderabad-500003.

Dear Sirs,

Sub: GST (Appeals) – Appeal filed by the Assistant Commissioner of Central Tax, Secunderabad Commissionerate Vs M/s. Alpine Estates – **Intimation of Personal Hearing** –Regarding.

Please find enclosed copy of appeal 107/2023-24-Sec-Adjn-ADC(GST) dated 27.03.2024 on the aforesaid subject. The said Appeal has been assigned Appeal No. **96/2024(SC)DGST**, and it is requested to cite/quote the above Appeal number, in your future correspondence.

2. In this regard, you are requested to submit memorandum of Cross Objections if any, verified in the prescribed manner. Otherwise, it would be presumed that there are no comments to offer and the matter will be decided based on the material/evidence available on records. Further, the undersigned is directed by the Commissioner of Central Tax, Hyderabad Appeals – II Commissionerate, to inform that the personal hearing has been fixed on **25th September, 2024**, in Room No.804, 7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad – 500 004.

3. It is advised to appear before Shri. Manoj Kumar Rajak, Commissioner of Central Tax, for the personal hearing, on the appointed day without fail. In case of nonappearance on the appointed day the case will be adjudicated, basing on the evidences available on record.

4. For any information/enquiry/clarification, the undersigned may be contacted on mobile No.9848576789 or email to hydappeals.two@gmail.com / cgst.hydappeals2@gov.in.

Yours Faithfully,

C.C. GOPI

(C.C. GOPI)
SUPERINTENDENT

En. above -

Duplicate copy of Appeal filed by the department. (attached). (Alpine Estate).



केन्द्रीय कर सहायक कार्यालय, सिकंदराबाद माल एवम सेवाकर मण्डल,
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD GST DIVISION, SECUNDERABAD
SALIKE SENATE, D.No: 2-4-416 & 417, RAMGOPALPET, M.G.
ROAD, SECUNDERABAD- 500 003
Phone 7901243130 E-mail- cgst.secddiv@gov.in

O.C. No.:433/2024

दिनांक Dated: 27-06-2024

To
The Commissioner of Central Tax (Appeals-II),
GST Bhavan, L.B. Stadium Road, Basheerbagh,
Hyderabad - 500 004.

Sir,

Sub:- GST - Department Appeal against Order-In-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate in the case of M/s. Alpine Estates, 5-4-187/3 &4, II Floor, Soham Mansion, MG Road, Secunderabad - 500 003 - Regarding.

I have been authorized by the Commissioner of Central Tax, Secunderabad GST Commissionerate under Section 107(2) of the CGST Act, 2017 to file an appeal before **The Commissioner of Central Tax (Appeals-II), Hyderabad** against Order-In-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate in the case of M/s. Alpine Estates, 5-4-187/3 &4, II Floor, Soham Mansion, MG Road, Secunderabad - 500 003.

2. In view of the above, I am enclosing herewith Appeal in Form APL-03, Statement of Facts, Grounds of Appeal along with a copy of Review order/Authorisation letter bearing No. **REVIEW ORDER NO. 79/2024-25-OIO(ST), dated 26.06.2024** passed by the Commissioner of Central Tax, Secunderabad GST Commissionerate, Hyderabad, Copy of the Order-in-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, along with all the relevant documents in duplicate.

Yours faithfully/ आपका आभारी,

Encl: As above

(आर.सत्यनारायण)/(R.SATYANARAYANA)
सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/ Secunderabad Division

Copy submitted to:

1. The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad. // Attn: Supdt (Review) //
2. The Additional Commissioner (Adjudication) of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad. // By Name: Supdt (Adjudication) //

Copy to:

1. The Superintendent, Ramgopalpet -I Range, Secunderabad GST Division - for

**BEFORE THE COMMISSIONER OF CENTRAL TAX,
(APPEALS-II) COMMISSIONERATE, HYDERABAD**

**Assistant/Deputy Commissioner of Central Tax,
Secunderabad Division, Salike** Senate,
1st Floor, D. No. 2-4-416 & 417,
Ramgopalpet, MG Road, Secunderabad 500003 Appellant

Vs

M/s. Alpine Estates,
5-4-187/3 &4, II Floor, Soham Mansion,
MG Road, Secunderabad – 500 003 Respondent

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GST APL-03		
[SEE RULE 109 OF CGST RULES 2017]		
Application to the Appellate Authority under Sub-Section (2) of Section 107 of CGST Act, 2017		
1	Name and designation of the appellant	Name: R.SATYANARAYANA Designation: Assistant Commissioner of Central Tax, Secunderabad GST Division. Jurisdiction: Secunderabad GST Division, Secunderabad GST Commissionerate. State/ Center: Center Name of the State: Telangana
2	GSTIN/ Temporary ID/UIN	----
3	Order No. & Date	Order-in-Original No.107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024.
4	Designation and address of the officer passing the order appealed against	Additional Commissioner of Central Tax Secunderabad GST Commissionerate, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad - 500 004
5	Date of Communication of the order appealed against	28.03.2024
6	Details of the case under dispute	Order-in-Original No.107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024.
	(i) Brief issue of the case under dispute	The CESTAT in its Order has directed the Adjudicating Authority to quantify the Tax payable and not decide the taxability or otherwise. However the Adjudicating Authority has by his findings at para 10 of the impugned OIO has gone beyond the jurisdiction set out in the denovo proceedings.
	(ii) Description and classification of goods or services in dispute	Residential complex services.
	(iii) Period of dispute:	January 2010 to December 2011
	(iv) Amount under dispute	
7	Statement of facts	Enclosed
8	Grounds of Appeal	Enclosed
9	Prayer	Enclosed
10	Amount of demand in dispute, if any	

PLACE: HYDERABAD
DATE: 27.06.2024

SIGNATURE:

30.06.2024
27.06.2024
(R.SATYANARAYANA)
Assistant Commissioner of Central Tax
Secunderabad GST Division
आर. सत्यनारायण
R. SATYANARAYANA
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय कर/Central Tax
सिकंदराबाद जी एस टी मंडल
Secunderabad GST Division
हैदराबाद/Hyderabad

STATEMENT OF FACTS

M/s. Alpine Estates, 5-4-187/3 &4, II Floor, Soham Mansion, MG Road, Secunderabad – 500 003 (here-in-after referred to as “assessee/Alpine”) were registered with the Service Tax Department vide Registration number AANFA5250FST001 for rendering works contract services.

1.2. The assessee is engaged in sale of residential houses/units in venture by name “Flower Heights” to prospective buyers while the units are under construction by entering into following agreements:

- (i) Sale deed for sale of undivided portion of land together with semi-finished portion of the flat. Sale deed is registered and appropriate ‘Stamp Duty’ has been discharged on the same; and
- (ii) an agreement for construction with their customers.

As it involved both transfer of property in goods and also provision of services, in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under works contract services.

1.3. The Department has initially issued a Show Cause Notice vide HQPOR No. 82/2010-Adjn(ST) dated 16.06.2010 covering the period January 2009 to December 2009 on the construction and work contract services. The Hon’ble CESTAT vide Final Order No. A/30172-30178/2019 dated 31.01.2019 set aside the demands raised in the above Show Cause Notice holding that service tax is not applicable on sale of flats prior to 01.07.2010.

1.4. Further, the following two periodical Show Cause Notices were issued to the assessee covering the period from January 2010 to December 2011:

1. O.R.No. 62/2011-Adjn (ST) dt.23.04.2011

: S.Tax involved : Rs.35,03,113/-

2. O.R.No. 51/2012-Adjn (ST) dt.24.04.2012

: S.Tax involved: Rs.48,33,495/-

The above two Show Cause Notices were adjudicated vide a common Order-in-Original No 49/2012-Adjn (ST)(ADC) dt: 31.08.2012. The said Order-in-Original was appealed against before the Appellate Authority. The Commissioner (Appeals) vide Order-in-Appeal No. 38/2012 (H-II) upheld the Order-In-Original but remanded the matter for re-quantification. To the extent aggrieved by the Order-in-Appeal, the assessee filed an appeal before the Hon’ble CESTAT.

1.5. The Hon'ble CESTAT, Hyderabad vide Final Order No. ST/30699/2019 dt: 19.06.2019:

- (i) set aside the demand for the period from Jan'2010 to Jun'2010
- (ii) set aside the demand raised on registration fees, VAT etc., for the period January 2010 to December 2011
- (iii) with regard to demand for the period July'2010 to Dec'2011 the matter was remanded to the original authority for denovo adjudication only to the limited extent to check whether the Show Cause Notice has given deduction towards sale deed value or not; if not given directed the adjudicating authority to pass the denovo order after giving the deduction.

1.6. As per the directions of Hon'ble CESAT vide the above cited Final Order, the Adjudicating Authority has taken up the denovo adjudication proceedings i.r.o. the above two Show Cause Notices covering the period January 2010 to December 2011 and passed the impugned Order-in-Original dt: 27.03.2024. The Adjudicating Authority vide the impugned Order-In-Original (Denovo):

- (i) dropped the demand proposed in the notice for the period from January 2010 to June 2010
- (ii) calculated the Service Tax liability after deducting sale deed value, VAT, Registration charges etc., other non taxable receipts (Electricity etc.)

2. In view thereof, the Adjudicating Authority held that the taxpayer is liable to pay S.Tax of Rs.8,99,823/- for the period from July 2010 to December 2010 and Rs.22,83,554/- for the period from Jan'11 to Dec'2011. Accordingly, the Adjudicating Authority confirmed the demands along with interest and penalties.

GROUND OF APPEAL

The Adjudicating Authority vide the impugned Order-in-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 has dropped the demand of Rs 51,53,231/- for the period January 2010 to December 2011 which appears to be not legal and proper for the following reasons:

1.2. The assessee has undertaken construction of a single venture by name "Flower Heights", Mallapur, Hyderabad having 102 units for the said period. Section 65(91a) of Chapter V of the Finance Act, 1994 defines "residential complex" which is reproduced as under:

"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;]

1.3. It is not in dispute that the venture undertaken by them satisfied all the ingredients of the definition of the residential complex i.e. more than 12 residential units, common area and the layout of such project approved by the civil authorities. The same has been sold to various customers by executing two agreements. A sale deed was executed at semi finished stage and stamp duty was paid for the undivided portion of the land along with semi finished construction. Thereafter, another agreement was entered for completion of the flat. On this issue, the Board vide Circular No. 108/02/2009 – ST dated 29.01.2009 has clarified as under:

"The matter has been examined by the Board. Generally, the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property

(5)

for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax".

1.4. It appears that the assessee had discharged the service tax on the amounts attributable to the value received by them over and above the sale deed value till December 2008 under Works Contract Service in respect of construction of residential complex and not paid the service tax for the period from 01/2009 onwards under the pretext of the Board's clarification in the circular dated 29.01.2009. The Board Circular prescribed three conditions like construction should be completed, full payment of the agreed sum should be paid and sale deed should be executed for the full value of the residential unit. In the instant case, though full payments were made, construction was not complete and sale deed was executed for part amount of the total consideration. As such the assessee is not covered by the situation explained in the Board's Circular relied upon by the assessee and the Hon'ble CESTAT in the case of M/s. Kolla Developers and also M/s. Modi & Mehta Homes.

1.5. Further, the exclusion clause provided in the definition of 'residential complex' would apply to the "complex as a whole" and not to individual residential units. It is clarified that if the entire residential complex is meant for use by one person then it gets excluded from the definition of 'residential complex' but not in the case of individual residential units as in the instant case. Further, each construction agreement with the individual customer is a 'works contract' independent of the agreement entered with another individual customer and hence reliance of the assessee and the Hon'ble Tribunal on the said circular is not relevant.

1.6. In the instant case, the assessee undertook the construction of projects having more than 12 units and the construction of entire project/residential complex is subject to levy of service tax and accordingly the entire project/complex is one works contract in terms of the provisions of clause (c) of the explanation under 'Works Contract Service' as provided under Section 65(105)(zzzza) of the Finance Act, 1994.

65(105)(zzzza) : 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, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, 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 commissioning (EPC) projects;

1.7. The second agreement (written or oral) and by whatever name is called involve supply of material and labour to bring the semi-finished flat to a stage of completion. As it is a composite contract involving labour and material it clearly satisfies the definition of ‘Works Contract Service’. Therefore, the classification under works contract service and the same shall be preferred in view of the Section 65A of the Act. The Board vide Circular No. 128/10/2010-ST dated 24.08.2010 para 2 has also clarified as under:

“The matter has been examined. As regards the classification, with effect from 01.06.2007 when the new service ‘Works Contract’ service was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because ‘works contract’ describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.”

1.8. In view of the above, it appears that the activity undertaken by the assessee in the instant case is classifiable under “Works Contract Service” and the taxpayer is liable for service tax for the period prior to 07/2010. It is also pertinent to mention that the aspect of taxability under “Works Contract Service” has been upheld by the Commissioner (A) vide Order-in-Appeal No. 38/2013 (H-II) S.Tax dt.27.02.2013.

1.9. Whereas, the Hon’ble CESTAT vide Final Order No. ST/30699/2019 dt: 19.06.2019 set aside the demand for the period prior to 07/2010. The said

Final Order has been accepted by the Commissioner on MONETARY GROUNDS. Hence, it appears that the demand pertaining to the period post 07/2010 has not been reached finality. However, the Adjudicating Authority dropped the demand which appears to be not legal and proper.

1.10 Further the CESTAT in its Order has directed the Adjudicating Authority to quantify the Tax payable and not decide the taxability or otherwise. However, the Adjudicating Authority has by his findings at para 10 of the impugned OIO has gone beyond the jurisdiction set out in the denovo proceedings. Therefore, an appeal against the impugned Order-in-Original is required to be preferred with the Commissioner (Appeals-II), Hyderabad and accordingly it is hereby ordered as follows:

PRAYER

Based on the above grounds, the Appellant prays that the Appellate Authority may be pleased to decide:

- (i) set aside the impugned Order-in-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate to the extent of dropping the demand; or
- (ii) pass any suitable orders, as deemed fit.

31.12.2023/21.21.21
27.06.2024

Signature of the Appellant

आर. सत्यनारायण
R. SATYANARAYANA
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय कर/Central Tax
सिकंदराबाद जी एस टी मंडल
Secunderabad GST Division
हैदराबाद/Hyderabad

VERIFICATION

I, R.SATYANARAYANA, the Appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the 27th day of June, 2024

Place: Hyderabad.

31.12.2023/21.21.21
27.06.2024

Signature of the Appellant

आर. सत्यनारायण
R. SATYANARAYANA
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय कर/Central Tax
सिकंदराबाद जी एस टी मंडल
Secunderabad GST Division
हैदराबाद/Hyderabad



केन्द्रीयकर एवं केन्द्रीय उत्पाद शुल्क आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX & CENTRAL EXCISE
सिकंदराबाद जीएसटी आयुक्तालय, जीएसटी भवन, एलबीस्टेडियम रोड,
SECUNDERABAD GST COMMISSIONERATE, GST BHAWAN, L.B. STADIUM ROAD,
बशीरबाग, हैदराबाद BASHEERBAGH, HYDERABAD - 500 004.
Ph. No.: 040-23231486 Email id: cgst.seccommr@gov.in

GEXCOM/REV/ST/OIO/5593/2024-REV-O/COMMR-CGST-SECUNDERABAD

Dated: 26.06.2024

Review Order No.79/2024-25 - OIO (ST)

(Issued by Principal Commissioner of Central Tax and Central Excise,
Secunderabad GST Commissionerate, Hyderabad)

Sub: Review of Order-In-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate in the case of M/s. Alpine Estates, 5-4-187/3 &4, II Floor, Soham Mansion, MG Road, Secunderabad - 500 003 - Review Order under Section 84(1) of the Finance Act, 1994 - Issued.

* * * * *

WHEREAS, in exercise of the Powers conferred under Section 84(1) of the Finance Act, 1994, I, the undersigned, Principal Commissioner of Central Tax, Central Excise, Secunderabad GST Commissionerate, Hyderabad has called for and examined the records relating to the Order-in-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate (hereinafter called as "Adjudicating Authority") in respect of M/s. Alpine Estates, Secunderabad for the purpose of satisfying himself as to legality and propriety of the said Order-in-Original. The OIO has been received on 27.03.2024.

2 BRIEF FACTS OF THE CASE:

2.1. M/s. Alpine Estates, 5-4-187/3 &4, II Floor, Soham Mansion, MG Road, Secunderabad - 500 003 (here-in-after referred to as "assessee/Alpine") were registered with the Service Tax Department vide Registration number AANFA5250FST001 for rendering works contract services.

2.2. The assessee is engaged in sale of residential houses/units in venture by name "Flower Heights" to prospective buyers while the units are under construction by entering into following agreements:

- (i) Sale deed for sale of undivided portion of land together with semi-finished portion of the flat. Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same; and
- (ii) an agreement for construction with their customers.

As it involved both transfer of property in goods and also provision of services, in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under works contract services.

2.3. The Department has initially issued a Show Cause Notice vide HQPOR No. 82/2010-Adjn(ST) dated 16.06.2010 covering the period January 2009 to December 2009 on the construction and work contract services. The Hon'ble CESTAT vide Final Order No. A/30172-30178/2019 dated 31.01.2019 set aside the demands raised in the above Show Cause Notice holding that service tax is not applicable on sale of flats prior to 01.07.2010.

2.4. Further, the following two periodical Show Cause Notices were issued to the assessee covering the period from January 2010 to December 2011:

- 1. O.R.No. 62/2011-Adjn (ST) dt.23.04.2011
: S.Tax involved : Rs.35,03,113/-
- 2. O.R.No. 51/2012-Adjn (ST) dt.24.04.2012
: S.Tax involved: Rs.48,33,495/-

The above two Show Cause Notices were adjudicated vide a common Order-in-Original No 49/2012-Adjn (ST)(ADC) dt: 31.08.2012. The said Order-in-Original was appealed against before the Appellate Authority. The Commissioner (Appeals) vide Order-in-Appeal No. 38/2012 (H-II) upheld the Order-In-Original but remanded the matter for re-quantification. To the extent aggrieved by the Order-in-Appeal, the assessee filed an appeal before the Hon'ble CESTAT.

2.5. The Hon'ble CESTAT, Hyderabad vide Final Order No. ST/30699/2019 dt: 19.06.2019:

- (i) set aside the demand for the period from Jan'2010 to Jun'2010
- (ii) set aside the demand raised on registration fees, VAT etc., for the period January 2010 to December 2011

- (iii) with regard to demand for the period July'2010 to Dec'2011 the matter was remanded to the original authority for denovo adjudication only to the limited extent to check whether the Show Cause Notice has given deduction towards sale deed value or not; if not given directed the adjudicating authority to pass the denovo order after giving the deduction.

2.6. As per the directions of Hon'ble CESAT vide the above cited Final Order, the Adjudicating Authority has taken up the denovo adjudication proceedings i.r.o. the above two Show Cause Notices covering the period January 2010 to December 2011 and passed the impugned Order-in-Original dt: 27.03.2024. The Adjudicating Authority vide the impugned Order-In-Original (Denovo):

- (i) dropped the demand proposed in the notice for the period from January 2010 to June 2010
- (ii) calculated the Service Tax liability after deducting sale deed value, VAT, Registration charges etc., other non taxable receipts (Electricity etc.)

In view thereof, the Adjudicating Authority held that the taxpayer is liable to pay S.Tax of Rs.8,99,823/- for the period from July 2010 to December 2010 and Rs.22,83,554/- for the period from Jan'11 to Dec'2011. Accordingly, the Adjudicating Authority confirmed the demands along with interest and penalties.

2.7. Whereas, on examination of the impugned Order-in-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate the Commissioner is of the considered opinion that the said Order-in-Original does not appear to be legal and proper on the following grounds:

3. GROUND OF APPEAL:

3.1 The Adjudicating Authority vide the impugned Order-in-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 has dropped the demand of Rs 51,53,231/- for the period January 2010 to December 2011 which appears to be not legal and proper for the following reasons:

3.2. The assessee has undertaken construction of a single venture by name "Flower Heights", Mallapur, Hyderabad having 102 units for the said

period. Section 65(91a) of Chapter V of the Finance Act, 1994 defines “residential complex” which is reproduced as under:

“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;]*

3.3. It is not in dispute that the venture undertaken by them satisfied all the ingredients of the definition of the residential complex i.e. more than 12 residential units, common area and the layout of such project approved by the civil authorities. The same has been sold to various customers by executing two agreements. A sale deed was executed at semi finished stage and stamp duty was paid for the undivided portion of the land along with semi finished construction. Thereafter, another agreement was entered for completion of the flat. On this issue, the Board vide Circular No. 108/02/2009 – ST dated 29.01.2009 has clarified as under:

“The matter has been examined by the Board. Generally, the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of ‘agreement to sell’. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of ‘self-service’ and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to

service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax".

3.4. It appears that the assessee had discharged the service tax on the amounts attributable to the value received by them over and above the sale deed value till December 2008 under Works Contract Service in respect of construction of residential complex and not paid the service tax for the period from 01/2009 onwards under the pretext of the Board's clarification in the circular dated 29.01.2009. The Board Circular prescribed three conditions like construction should be completed, full payment of the agreed sum should be paid and sale deed should be executed for the full value of the residential unit. In the instant case, though full payments were made, construction was not complete and sale deed was executed for part amount of the total consideration. As such the assessee is not covered by the situation explained in the Board's Circular relied upon by the assessee and the Hon'ble CESTAT in the case of M/s. Kolla Developers and also M/s. Modi & Mehta Homes.

3.5. Further, the exclusion clause provided in the definition of 'residential complex' would apply to the "complex as a whole" and not to individual residential units. It is clarified that if the entire residential complex is meant for use by one person then it gets excluded from the definition of 'residential complex' but not in the case of individual residential units as in the instant case. Further, each construction agreement with the individual customer is a 'works contract' independent of the agreement entered with another individual customer and hence reliance of the assessee and the Hon'ble Tribunal on the said circular is not relevant.

3.6. In the instant case, the assessee undertook the construction of projects having more than 12 units and the construction of entire project/residential complex is subject to levy of service tax and accordingly the entire project/complex is one works contract in terms of the provisions of clause (c) of the explanation under 'Works Contract Service' as provided under Section 65(105)(zzzza) of the Finance Act, 1994.

65(105)(zzzza) : 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, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, 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 commissioning (EPC) projects;

3.7. The second agreement (written or oral) and by whatever name is called involve supply of material and labour to bring the semi-finished flat to a stage of completion. As it is a composite contract involving labour and material it clearly satisfies the definition of ‘Works Contract Service’. Therefore, the classification under works contract service and the same shall be preferred in view of the Section 65A of the Act. The Board vide Circular No. 128/10/2010-ST dated 24.08.2010 para 2 has also clarified as under:

“The matter has been examined. As regards the classification, with effect from 01.06.2007 when the new service ‘Works Contract’ service was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because ‘works contract’ describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.”

3.8. In view of the above, it appears that the activity undertaken by the assessee in the instant case is classifiable under “Works Contract Service” and the taxpayer is liable for service tax for the period prior to 07/2010. It is also

pertinent to mention that the aspect of taxability under "Works Contract Service" has been upheld by the Commissioner (A) vide Order-in-Appeal No. 38/2013 (H-II) S.Tax dt.27.02.2013.

3.9. Whereas, the Hon'ble CESTAT vide Final Order No. ST/30699/2019 dt: 19.06.2019 set aside the demand for the period prior to 07/2010. The said Final Order has been accepted by the Commissioner on MONETARY GROUNDS. Hence, it appears that the demand pertaining to the period post 07/2010 has not been reached finality. However, the Adjudicating Authority dropped the demand which appears to be not legal and proper.

3.10 Further the CESTAT in its Order has directed the Adjudicating Authority to quantify the Tax payable and not decide the taxability or otherwise. However the Adjudicating Authority has by his findings at para 10 of the impugned OIO has gone beyond the jurisdiction set out in the denovo proceedings. Therefore, an appeal against the impugned Order-in-Original is required to be preferred with the Commissioner (Appeals-II), Hyderabad and accordingly it is hereby ordered as follows:

ORDER

4. In the light of the foregoing, the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, Hyderabad is hereby directed to make a prayer within the stipulated time before Commissioner (Appeals-II), Hyderabad seeking to:

- (i) set aside the impugned Order-in-Original No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate to the extent of dropping the demand of 51,53,231/- along with interest and penalty; or
- (ii) pass any suitable orders, as deemed fit.

 26/06/2024

**MANKOSAKAR SURENDRAKUMAR CHANDRAKANT RAO
PRINCIPAL COMMISSIONER
SECUNDERABAD GST COMMISSIONERATE**

To
The Assistant Commissioner of Central Tax,
Secunderabad CGST Division,
Secunderabad GST Commissionerate.



केन्द्रीय कर, केन्द्रीय उत्पाद शुल्क एवं सेवा कर आयुक्त 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.29/2019-20-Sec-Adjn-JC (ST)
DIN-20240356YO000000BC83

Date: 27.03.2024

मूल आदेश संख्या / **ORDER-IN-ORIGINAL No.107/2023-24-Sec-Adjn-ADC(ST)**
(Passed by Sri 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.

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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.

Sub: Service Tax - Offence- Case against M/s Alpine Estates - Non-payment of Service Tax on taxable services rendered- Issuance of Order In Original (Denovo) - Reg.

BRIEF FACTS OF THE CASE:

M/s Alpine Estates, #5-4-187/3&4, II Floor, Soham Mansion, MG Road, Secunderabd-500003 (here-in-after referred as "Alpine" or the assessee), are engaged in providing works contract service. M/s Alpine Estates is a registered partnership firm and got themselves registered with the department with Service Tax Registration Number AANFA5250FST001.

2. A Show Cause Notice vide HQPOR No.82/2010-Adjn(ST) dt. 16.06.2010 was issued for the period from January 2009 to December 2009 for an amount of Rs.31,10,377/- including cesses and the same has been adjudicated and confirmed vide Order -in-Original No:44/2010-ST dt. 15.10.2010. Further, the assessee has gone an appeal, and the same has been dismissed vide OIA No. 08/2011(H-II) dt. 31.01.2011 by the Commissioner (Appeal), Hyderabad. Aggrieved from the said Order in Appeal, the assessee had filed an appeal before Hon'ble CESTAT. Hon'ble CESTAT vide Final order No.A/30172-30178/2019 dated 31.01.2019 has set aside the demands raised in the above SCN issued for the period from January, 2009 to December, 2009 holding that service tax is not applicable on sale of flats prior to 01.07.2010. Another two show cause notices were issued vide OR. No. 62/2011-Adjn(ST) Gr.X, dated 23.04.2011 and OR.No.51/2012 - Adjn (Addl. Commr.), dated 24.04.2012 for the period from January, 2010 to December, 2010 and January, 2011 to December, 2011

respectively. The impugned above said both Show Cause Notices are sequel to the same for the period from January, 2010 to December, 2011.

3. Show Cause Notice OR No.OR. No. 62/2011-Adjn(ST) Gr.X, dated 23.04.2011: The Show Cause Notice is reproduce hereunder:-

"2. A Show Cause Notice vide HQPOR No. 82/2010-(ST) dt. 16.6.2010 was issued for the period from January 2009 to December 2009 involving an amount of Rs. 31,10,377/- including cess and the same has been adjudicated and confirmed vide Order-In-Original NO:44/2010-ST DT. 15.10.2010. Further, the assessee has gone an appeal and the same has been dismissed vide OIA No.08/2011(H-II) dt.31.1.2011 by the Commissioner (Appeal), Hyderabad. The present notice is issued in sequel to the same for the period from January 2010 to December 2010.

3. As per Section 65 (105) (zzzza) of the Finance Act, 1994 defines that '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.....,
 - (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."

3. As per Section 65(91a) of the Finance Act, 1994, "Residential Complex" means any complex comprising of -

- i. a building or buildings, having more than twelve residential units;

- 18
- 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 the premises and the layout of such premises is approved by an authority under the 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.

4. M/s Alpine Estates registered with the service tax department and not discharging the service tax liability properly and not filing the ST-3 returns, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that M/s Alpines Estate have undertaken a single venture by name **M/s Flower Heights** located at Plot No.3-3-27/1, Mallapur Old Village, Uppal Mandal, RR District and received amount from customers towards sale of land and agreement of construction of 102 houses for the said period. Further, it is found that they have not filed ST-3 returns for the said period.

5. Further it is made clear on 01.02.2010 by Sri Shanker Reddy, Deputy General Manager (Admn) authorised representative of the assessee, that the activities undertaken by the company are providing services of construction of residential complexes and also stated that initially, they collected the amounts against booking and also stated that initially, they collected the amounts against booking form/agreement of sale. At the time of registration of the property, the amounts received till then will be allocated towards Sale Deed and Agreements of Construction. Therefore, service tax on amount received against Agreement of Construction portion of the amounts towards agreement of construction is aid on receipt basis. The agreement of sale constitutes the total amount of land/semi-finished flat with undivided share of land and value of construction. The Sale Deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way fo sale of constructed unit as per the agreement of sale but possession was given in two phases one is land/semi-finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks".

6. As per the exclusion provided in Section 65(91a) of the Service Tax Act, the residential complex 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. Here "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. It is further clarified in para 3 of the Circular No. 108/02/2009-ST dt. 29.01.2009 if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer; who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/ promoter/developer constructs entire complex for one person for personal use as residence by such person would not be subjected to service tax. Further, the builder/promoter/developer normally enters into construction /completion agreement after execution of sale deed, till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self-services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore, there is no levy of service tax on the services rendered till sale deed. i.e. on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements/contract against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105(zzzza)) of the Finance Act 1994.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s Alpine Estates qualifies to be residential complex as it contains more than twelve residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 14014/P4/PLG/H/2006 dt. 23.3.2007. As seen from the records, the assessee entered into 1) a sale deed for a sale of undivided portion of land together with semi-finished portion of the flat and 2) an agreement for

construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assesses thereafter to their customers under agreement of construction are taxable under Service Tax as there exists service provider and receiver relation between them. As there involved the transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under works contract service.

8. M/s Alpine Estates, Hyderabad vide their statement received in this office on 22.4.2011 has submitted the Flat-wise amounts received for the period from January 2010 to December 2010. The total amount received is Rs. 85027011/- against agreements of construction during the period and are liable to pay service tax including cess works out to Rs. 3503113/- and the interest at appropriate rates under Works Contract Service respectively.

9. M/s Alpine Estates, Hyderabad are well aware of the provisions and of liability of service tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly with an intention to evade payment of Service Tax. They have intentionally not filed the ST-3 returns for the said period. Hence, the service tax payable by M/s Alpine Estates appears to be recovered under Sub-Section (1) of Section 73 of the Finance Act 1994.

10. From the foregoing, it appears that M/s Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3 have contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of service tax on the value of the taxable services and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they have not filed statutory returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details/information, with an intent to evade payment of service tax and are liable for recovery under provisions to the Section 73(1) of the Finance Act 1994 and thereby they have rendered themselves liable for penal action under Section 77 & 76 of the Finance Act 1994.

11. Therefore, M/s Alpine Estates, Hyderabad, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad, within 30 days of receipt of this notice as to why:-

- i. An amount of Rs.3503113/-(Rupees Thirty five lakhs three thousand one hundred thirteen only) including cess should not be demanded on the works contract service under the Sub-Section (1) of Section 73 of the Finance Act 1994 for the period from January 2010 to December 2010; and
- ii. Interest is not payable by them on the amount demanded at (i) above under Section 75 of the Finance Act 1994; and
- iii. Penalty should not be imposed on them under Section 77 of the Finance Act 1994; for the contravention of Rules and provisions of the Finance Act 1994; and
- iv. Penalty should not be imposed on them under Section 76 of the Finance Act 1994.

4. Show Cause Notice OR.No.51/2012- Adjn (Addl.Commr.), dated 24.04.2012: The Show Cause Notice is reproduced hereunder:

"2. A Show Cause Notice vide HQPOR No.82/2010-Adjn(ST) dt. 16.06.2010 was issued for the period from January 2009 to December 2009 for an amount of Rs.31,10,377/- including cesses and the same has been adjudicated and confirmed vide Order -in-Original No:44/2010-ST dt. 15.10.2010. Further, the assessee has gone an appeal, and the same has been dismissed vide OIA No. 08/2011(H-II) dt. 31.01.2011 by the Commissioner (Appeal), Hyderabad. Another show cause was issued vide OR No.62/2011-2010-Adjn (ST) dt.23.04.2011 for the period from January, 2010 to December, 2010. The present notice is issued in sequel to the same for the period from January 2011 to December 2011.

3. As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of Land together with semi-finished portion of the flat and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assesses thereafter to their customers under agreement of construction are taxable under Service Tax as their exists service provider and receiver relationship between them. As there involved the transfer of property in goods in

execution of the said construction agreements. It appears that the services rendered by them after execution of the sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deed are taxable services under "Works Contract Service".

4. As per Section 65 (105) (zzzza) of the 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 in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation: For the purpose 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 purpose of carrying out,-
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise.....,
 - (b) construction of a new building or a civil structure or a part thereof, or 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) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

4.1 An optional composition scheme for payment of Service Tax in relation to Works Contract Service is provided by the Notification No.32/2007-ST dated 22-05-2007, effective from 01-06-2007, under the "Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Under the said scheme, an assessee has to pay an amount equivalent to two per cent of the gross amount charged for the Works Contract, excluding the Value Added Tax (VAT) or Sales Tax paid on transfer of property of goods involved in the execution of Works Contract. W.e.f. 1-3-2008 onwards, the said rate of 2% is changed to 4% vide Notification No.7/2008-S.T. dated 1-3-2008.

5 M/s Alpine, Hyderabad vide their statement received in this office on 07.02.2012 has informed that they received an amount of Rs. 11,73,17,845/- for the period from January 2011 to December 2011. The total consideration received by them for the period is Rs. 11,73,17,845/- during the period and are liable to pay service tax including cess on the same works out to Rs. 48,33,495/-. The assessee further submitted that

they have paid service tax of Rs. 21,95,524/- (Rs.745524 Dt. 7.6.2011 and RS. 14,50,000/- Dt. 09.02.2012) under protest.

6. M/s Alpine registered with the service tax department and not discharging the service tax liability properly and also not filing the ST-3 returns, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that M/s Alpine Estate have undertaken a single venture name M/s Flower Heights located at Plot No. 3-3-27/1, Mallapur Old Village, Uppal Mandal, RR District and received amount from customers towards sale of land and agreement of construction of 102 houses.
7. M/s Alpine, are well aware of the provisions and liability of Service Tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly. They have not filed the ST-3 returns for the period up to 03/2011. Hence, the service tax payable by M/s Alpine, appears to be recovered under Sub-Section (1) of Section 73 of the Finance Act 1994.
8. From the foregoing, it appears that M/s Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3 have contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of Service Tax on the value of the taxable services and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they have not filed statutory returns for the taxable services rendered and also did not truly and correctly asses the tax due on the services provided by them and also did not disclose the relevant details/information. Hence the Service is liable for recovery under provisions of Section 73(1) of the Finance Act 1994 and they have rendered themselves liable for penal action under Section 76 of the Finance Act 1994 and Section 77 of the Finance Act 1994. They are also liable for Interest under Section 75 of the Finance Act, 1994.
9. Therefore, M/s Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad, Hyderabad are hereby required to show cause to the Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, 11-5-423/1/A, Sitaram Prasad Towers, Red Hills, Bazarghat Road, Hyderabad, within 30 (thirty) days of receipt of this notice as to why:-

- i. an amount of Rs. 48,33,495/- (Rupees Forty Eight Lakhs Thirty Three Thousand Four Hundred Ninety Five only) including cess should not be demanded on the "Works Contract Service" under the Sub-Section (1) of Section 73 of the Finance Act, 1994 for the period from January 2011 to December 2011. An amount of Rs.21,95,524/- (Rs.745524 Dt. 7.6.2011 and Rs.14,50,000/- Dt. 09.02.2012) by them should not be adjusted against the demand discussed supra; and
- ii. Interest is not payable by them on the amount demanded as (i) above under Section 75 of the Finance Act 1994; and
- iii. Penalty should not be imposed on them under Section 77 of the Finance Act 1994 for the contravention of Rules and provisions of the Finance Act 1994; and
- iv. Penalty should not be imposed on them under Section 76 of the Finance Act 1994."

5 The above said both Show Cause Notices were adjudicated vide Order in Original No.49/2012-Adjnc(ST)ADC, dated 31.08.2012 and the entire demands proposed in the notices were confirmed. The assessee had filed an appeal before Commissioner (Appeal) against the said order. The Commissioner (Appeals) vide Order-in-Appeal No.38/2013 (H-II) S. Tax dated 27.02.2013 upheld the OIO but remanded the matter for re-quantification. To the extent aggrieved by Order in Appeal, the assessee filed an appeal before Hon'ble CESTAT, Hyderabad. The Hon'ble CESTAT has set aside the demand raised for the period prior to 01.07.2010 and set aside the demand raised on registration fees, VAT etc for the period from 01.07.2010 vide its Final Order No.ST/30699/2019 dated 19.06.2019. With respect to the demand for the period July, 2010 to Decmber, 2011, the Hon'ble CESTAT had remanded the matter to the original authority for denovo adjudication only to the limited extent to check whether the Show Cause Notice has given deduction towards sale deed value or not. If the deduction is not given, directed the adjudication authority to pass the denovo order after giving the deduction. To clear the doubt as to whether the direction in the Final Order is for reconsideration as to whether the sale deed value is also subject to service tax, the assessee had filed a rectification of mistake application against the above referred Final Order and a clear findings has been provided by the CESTAT, Hyderabad, vide the Misc. Order No.M/30226/2022 dated 11.03.2022. Vide this Final Order, Hon'ble

CESTAT has cleared that the demand on registration fees, VAT etc are set aside for the period from 01.07.2010.

6 Personal Hearings and Submissions made by the assessee:

6.1 A personal hearing was fixed on 26.11.2019, 19.06.2020, 20.10.2020, 16.11.2020, 10.12.2020, 20.02.2023 and 08.12.2023. On behalf of the assessee, Sri Venkata Prasad P, CA, Hiregange & Associates had attended personal hearing on 11.12.2020, 20.07.2021 and 20.02.2023.

6.2 The assessee made their submissions vide letter dated 20.10.2020, 18.12.2020, 18.02.2021 and 21.03.2023.

6.2.1 The assessee's submission dated 18.02.2021: The relevant portion of the submission is reproduced hereunder:

"2. Further, during the course of personal hearing on 11.12.2020, your good self has asked us to submit the sample copies of customer ledgers, sale deeds and receipt wise statement for the period January 2010 to December 2011. In this regard, we are herewith submitting the following

- a. Sample copies of sale deeds along with ledger accounts of customers for the period January 2010 to December 2011
- b. Receipt wise statement for the period January 2010 to December 2011

3 In this regard, we would like to submit that the details of stamp duty and VAT paid was clearly mentioned on the sale deed by the Sub-registrar office which can be considered while passing the order. Further, the details of other reimbursements can be evidenced from the customer ledger accounts. Hence, we request you to drop the demand to that extent."

6.2.2 The assessee's submission dated 21.03.2023: The assessee's submission is reproduced hereunder:

Brief facts:

- A. Noticee is engaged in sale of residential houses in venture by name "Flower Heights" to prospective buyers while the units are under construction by entering into following agreements
- Sale Deed for sale of undivided portion of land together with semi-finished flat. Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same.

➤ Construction agreement for undertaking construction

B. Department has initially issued a Show Cause Notice dated 16.06.2010 covering the period January 2009 to December 2009 ("First SCN") proposing to demand service tax on amounts received towards construction agreement. The Hon'ble CESTAT vide Final order No. A/30172-30178/2019 dated 31.01.2019 set aside the demands raised in the above SCN holding that service tax is not applicable on sale of flats prior to 01.07.2010.

C. The above Show Cause Notice was followed by below periodical notices under Section 73(1A) for the period January 2010 to December 2011 which are in dispute in the Final Order No.ST/30699/2019 dated 19.06.2019

SCN reference	Time period	Proposed Demand
SCN No. 62/2011-Adjn (S.T.) Gr.X dated 23.04.2011	Jan 2010 to Dec 2010	Rs.35,03,113/-
SCN No. 52/2012-Adjn (Addl.Commr) dated 24.04.2012	Jan 2011 to Dec 2011	Rs.48,33,495/-
Total		Rs.83,36,608/-

D. The above referred SCN's were adjudicated vide a common Order-in-Original No.49/2012-Adjn ST ADC dated 31.08.2012 wherein vide Para 17 it was accepted that service tax would not be demanded on sale deed value however OIO dated 31.08.2012 had included the amounts received towards Sale deeds also.

E. Noticee has filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide Order-in-Appeal No.38/2013 (H-II) S. Tax dated 27.02.2013 upheld the OIO but remanded the matter for re-quantification.

F. To the extent aggrieved by Order-in-Appeal, the Noticee has filed appeal before Hon'ble CESTAT, Hyderabad. The Hon'ble CESTAT, Hyderabad has heard the matter and set aside the demand for the period January 2010 to June 2010 and set aside the demand raised on registration fees, VAT etc for the period January 2010 to December 2011. With respect to demand for the period July 2010 to December 2011, the Hon'ble CESTAT had remanded the matter to the original authority for denovo adjudication only to the limited extent to check whether the Show Cause Notice has given deduction towards sale deed value or not. If the deduction is not given, directed the adjudicating authority to pass the denovo order after giving the deduction.

- G. Noticee has filed an Rectification of Mistake Application against the above referred Final Order and the same is pending for disposal.
- H. The Noticee is herewith making following submissions for *denovo* adjudication.

Submissions for the Denovo adjudication:

1. Noticee at the outset submits that the Noticee has filed the Rectification of Mistake Application against the Final Order No. ST/30699/2019 dated 19.06.2019 and the same is pending before the CESTAT. As the issue is pending before Hon'ble Tribunal and matter is *sub-judice*, Noticee humbly requests Ld. Adjudicating authority to keep the proceedings in abeyance till the disposal of Rectification of Mistake Application by Hon'ble CESTAT, Hyderabad. In this regard, reliance is placed on
 - a. Vilsons Roofing Products Pvt Ltd Vs CCE, Kolhapur 2013-TIOL-2023-CESTAT-MUM wherein it was held that *"4. Brief facts of the case are that the appellants filed a refund claim before the adjudicating authority which was sanctioned and the refund was given to the appellants. Against the said order, the Revenue preferred an appeal before the Commissioner (Appeals) who set aside the order of sanctioning the refund claim and remanded the matter back to the adjudicating authority for reconsideration. The said order was challenged by the appellants before the Tribunal on the ground that the Commissioner (Appeals) has no power to remand the matter to the adjudicating authority and obtained stay from the Tribunal. While the matter is pending before the Tribunal, the adjudicating authority, on the matter on remand by the Commissioner (Appeals), has rejected the refund claim of the appellants. On appeal before the Commissioner (Appeals) the rejection was upheld. Aggrieved by the said order the appellants are before me.*
 5. When the issue before this Tribunal is sub judice therefore, the remand proceeding was not warranted. Hence, the impugned order passed by the adjudicating authority has no legal sanctity. Accordingly, the impugned order is set aside and the appeals are allowed. The stay applications are also disposed of in the above terms."
 - b. Agro Tech Foods Pvt Ltd Vs CC(I), Nhavasheva 2017 (345) ELT 668 (Tri-Mum)
 - c. Fiberfill Engineers Vs CCE, Delhi 2016 (332) ELT 478 (Del)
 - d. P K International Vs CCE, Thane-II 2014 (301) ELT 3 (Bom)
 - e. CC, Uttar Pradesh Vs Pidilite Industries Limited 2014 (309) ELT 598 (All)