

**BEFORE THE COMMISSIONER OF CUSTOMS AND CENTRAL TAX (APPEALS-
II), HYDERABAD COMMISSIONERATE, 7TH FLOOR, GST BHAVAN, L.B.
STADIUM ROAD, BASHEERBAGH, HYDERABAD-500001**

**Sub: Filing of reply to appeal against the appeal filed by the department vide
Appeal No. 96/2024(SC)DGST/115 in the case of M/s. Alpine Estates**

BETWEEN:

**The Assistant Commissioner of Central Tax,
Secunderabad Division, Salike Senate**

.....Appellant

AND

**M/s.Alpine Estates,
IInd Floor Soham Mansion,
MG Road, Secunderabad**

..... Respondent

FACTS OF THE CASE:

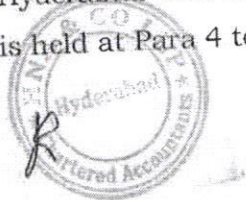
- A. M/s. Alpine Estates, #5-4-187/3&4, II Floor, Soham Mansion MG Road, Secunderabad - 500003, (hereinafter referred as "Respondent") is a partnership firm registered with the Service Tax Department vide Registration No. AANFA5250FST001.
- B. The Respondent is engaged in sale of residential houses in 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.
- C. 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.
- D. 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)	Jan 2011 to Dec 2011	Rs.48,33,495/-
Total		Rs.83,36,608/-

Copy of SCN's enclosed.

- E. 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. (Copy of Order-in- Original No.49/2012-Adjn ST ADC dated 31.08.2012 is attached).
- F. Respondent 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. (Copy of Order-in-Appeal No.38/2013 (H-II) S. Tax dated 27.02.2013 is attached).
- G. To the extent aggrieved by Order-in-Appeal, the Respondent 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 July 2010 to December 2011 vide its Final Order No. ST/30699/2019 dated 19.06.2019. (Copy of Final Order is attached as **Annexure ____**).
- H. 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.
- I. Respondent has filed a Rectification of Mistake Application against the above referred Final Order and a clear finding has been provided by the CESTAT, Hyderabad vide Misc. Order No. M/30226/2022 dated 11.03.2022 wherein it is held at Para 4 to 5 as under



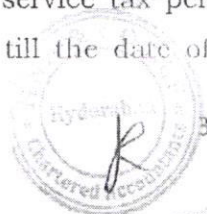
4. We have gone through the application for rectification of mistake and have perused the Final Order. We do not feel there is any error apparent on record. The Final Order must be read as a whole. The direction in the Final Order was neither to go beyond the scope of the SCN nor to consider levying service tax on sale deed value of immovable property. If the Final Order is read as a whole, it would be clear that the matter has been remanded for the purpose of computing the demand of service tax after 01.07.2010 and also reconsidering the penalty for this period and NOT to consider levying/charging Service Tax on value of sale of the property. The demand for the period prior to 01.07.2010 has already been set aside in the Final Order. Paragraph 17 of the impugned order of the Commissioner also indicates that the demand was only in respect of the service contract entered into after the sale deed has been executed and not on the sale value of the immovable property. This was also reproduced in paragraph 4 of the Final Order.

5. In view of the above, we find that there is neither any error apparent on record nor is there any direction to the Commissioner in the Final Order to go beyond the scope of SCN and demand service tax on the value of transfer of Immovable property. The appeal was partly allowed up to 01.07.2010 and partly remanded for the period after 01.07.2010 for reconsideration of both the demand and the penalty. The application for rectification of mistake is accordingly dismissed.

- J. In view of the above, this Respondent made their denovo submissions vide letter dated 20.10.2020, 18.12.2020, 18.02.2021 and 21.03.2023.
- K. Accordingly, the Respondent is in receipt of impugned Order in Original No. 107/2023-24-Sec-Adjn-ADC (ST) dated 27.03.2024 confirming the demand as under.

A. In respect of Show Cause Notice OR. No.62/2011-Adjn(ST) dated 23.04.2011

- (i) Confirmed the demand of Rs.8,99,823/- in terms of Section 73 (2) of the Finance Act, 1994;
- (ii) Dropped the demand of Rs.26,03,290/-;
- (iii) Confirmed demand of interest at applicable rate on the services tax demanded at (i) above in terms of Section 75 of the Finance Act, 1994;
- (iv) Imposed penalty @ Rs.200/- per day or 2% of such service tax per month whichever is higher, for the period of default till the date of

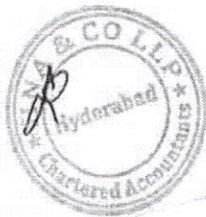


payment of service tax under Section 76 of the Finance Act, 1994 on them. However, the total amount of penalty payable in terms of Section 76 shall not exceed the service tax payable.

- (v) Imposed penalty of Rs. 1,000/- under Section 77 of the Finance Act, 1994.

B. In respect of Show Cause Notice OR. No.51/2012-Adjn(ST) dated 24.04.2012

- (i) Confirmed demand of Rs.22,83,554/- in terms of Section 73 (2) of the Finance Act, 1994;
 - (ii) Dropped the demand of Rs.25,49,941/-;
 - (iii) Confirmed the demand of interest at applicable rate on the services tax demanded at (B)(i) above in terms of Section 75 of the Finance Act, 1994 from them;
 - (iv) Imposed penalty @ Rs.200/- per day or 2% of such service tax per month whichever is higher, for the period of default till the date of payment of service tax under Section 76 of the Finance Act, 1994 on them. However, the total amount of penalty payable in terms of Section 76 shall not exceed the service tax payable.
 - (v) Imposed penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994.
- L. Aggrieved by the impugned order, which is contrary to facts, law and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Appellant preferred the appeal and the same was accepted by the Appellate Authority vide OIA No.HYD-SVTAX-SC-AP2-298-24-25 dated 20.08.2024.
- M. Subsequently, the department has filed an appeal against the Order in Original No. 107/2023-24-Sec-Adjn-ADC (ST) dated 27.03.2024 vide Appeal No.96/2024(SC)DGST/114
- N. In response to the above appeal, Respondent is filing the counter reply as follows:



REPLY TO DEPARTMENT'S APPEAL

1. Respondent submits that the grounds urged in the appeal filed by the department are untenable in law since the same is contrary to facts and judicial decisions.

In Re: The department appeal is beyond the CESTAT Final Order

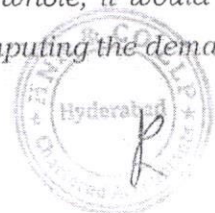
2. As stated in the background facts, the tribunal in its Final Order No. ST/30699/2019 set aside the demand prior to 01.07.2010 and remanded the matter to the adjudication authority for reconsideration to verify the quantification of the demand for the period July 2010 to December 2011. Further, Respondent submits that the Hon'ble CESTAT vide Para 4 and 5 held as follows

"4. Heard both sides. The finding of 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 the sale deed. 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 the 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 Noticee with customer which includes the semi-finished flat. Other charges like registration fees, VAT, etc needless to say will not be subject to service tax as being reimbursable."

3. Respondent submits that the even the Misc. Order No. M/30226/2022 dated 11.03.2022 held at Paras 4 & 5 which are reproduced as under:

"4. We have gone through the application for rectification of mistake and have perused the Final Order. We do not feel there is any error apparent on record. The Final Order must be read as a whole. The direction in the Final Order was neither to go beyond the scope of the SCN nor to consider levying service tax on sale deed value of immovable property. If the Final Order is read as a whole, it would be clear that the matter has been remanded for the purpose of computing the demand



of service tax after 01.07.2010 and also reconsidering the penalty for this period and NOT to consider levying/ charging Service Tax on value of sale of the property. The demand for the period prior to 01.07.2010 has already been set aside in the Final Order. Paragraph 17 of the impugned order of the Commissioner also indicated that the demand was only in respect of the service contract entered into after the sale deed has been executed and not on the sale value of the immovable property. This is also reproduced in paragraph 4 of the Final Order.

5. In view of the above, we find that there is neither any error apparent on record nor is there any direction to the Commissioner in the Final Order to go beyond the scope of SCN and demand service tax on the value of transfer of immovable property. The appeal was partly allowed up to 01.07.2010 and partly remanded for the period after 01.07.2010 for reconsideration of both the demand and the penalty. The application for rectification of mistake is accordingly dismissed".

4. Respondent submits that on combined reading of Para 5 and 7 of the Final Order No./30699/2019 dated 19.06.2019 and Para 4 and 5 of the Misc. Order No. M/30226/2022 dated 11.03.2022, it was clearly stated that the entire demand on amounts received towards Construction Agreement and Sale deed has been set aside for the period January 2010 to June 2010 and the demand on registration fees, VAT etc are set aside for the entire period i.e, January 2010 to December 2011. Therefore, demand dropped by OIO is proper for the period January 2010 to June 2010.
5. In this regard, it is submitted that with respect to demand on sale deed values for the period July 2010 to December 2010, Respondent submits that the Hon'ble CESTAT has remanded the matter to lower authority to check whether the deduction was actually given for the sale deed values as stated in Para 7 of SCN No. 62/2011-Adjn (ST) Gr.X dated 23.04.2011 and SCN No.52/2012-Adjn (Addl Commr) dated 24.04.2012, Para 17 of OIO No. 49/2012-Adjn-ST ADC dated 31.08.2012
6. The Show Cause Notice dated 23.04.2011 vide Para 7 and Show cause notice dated 24.04.2012 vide Para 3 alleged that

*"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 agreement of construction** to each*



of their customers to whom the land was already sold vide sale deed are taxable services under "Works Contract Services".

As seen from the operative part of SCN, the sole allegation of SCN is that the amounts received towards construction agreements are subject to service tax under the category of "Works Contract".

7. The same was confirmed by the OIO vide Para no. 17 as follows *"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**"*

However, while quantifying the demand, the SCN and OIO has included the value of sale deeds and other reimbursements such as VAT, registration charges etc though the same was never the allegation in the SCN.

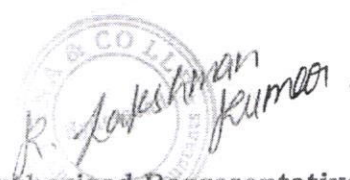
8. This shows that the OIO is correct and the impugned appeal is not correct and needs to be rejected.
9. Further, the appeal has stated that the appeal is not foiled against the CESTAT order on monetary limits, thereby, the issue has not attained finality. In this regard, Respondent submits that the same is not correct in view of the decision in case of Commissioner of GST, Chennai Vs Pay Pal India Pvt Ltd 2020 (39) GSTL 261 (Mad) wherein it was held as follows *"8. We cannot appreciate the contention of the Revenue that merely because the Department has not accepted the earlier Division Bench judgments of this Court, and without filing any appeal in an appropriate manner, the present appeal on the same ground cannot be entertained. The Revenue Department is bound by the judgments of this Court unless they are set aside by higher Courts in appropriate proceedings. It is also not the case of the Department that any subsequent amendment in law has changed the legal position and therefore the earlier judgments cannot be followed by this Bench. 9. In view of this, we are unable to persuade ourselves to accept the contentions raised by the Learned Counsel for the appellant Revenue and we do not find any question of law to be arising in the present appeal filed by the Revenue and the same is liable to be dismissed. Accordingly the appeal is dismissed. There is no order as to costs"*

10. Respondent craves leave to alter, add to, and/or amend the above reply



11. Respondent would also like to be heard in person before any order being passed in this regard.

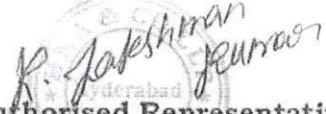
For Alpine Estates


Authorised Representative
(CA Lakshman Kumar K)

PRAYER

Therefore, it is humbly prayed to accept the submissions filed by the Respondent and dismiss the appeal filed by the department, and also grant any other consequential relief as may deem appropriate.

Place: Hyderabad


Authorized Representative

Date: 10.12.2024

VERIFICATION

I, CA Lakshman Kumar K, authorized representative of M/s. Alpine Estates (Respondent) herein do declare that what is stated above is true to the best of our information and belief.

Verified today the 10th of December 2024

Place: Hyderabad


CA Lakshman Kumar K
Authorized Representative of Respondent

BEFORE THE COMMISSIONER OF GST & CENTRAL TAX, APPEALS – II
COMMISSIONERATE, 7TH FLOOR GST BHAVAN, L.B STADIUM ROAD, BASHEERBAGH,
HYDERABAD, TELANGANA - 500004

Sub: Proceedings under Appeal No. 96/2024(SC)DGST/114 dated 27.06.2024 filed by Assistant Commissioner of Central Tax for OIO No. 107/2023-24-Sec-Adjn-ADC(GST) dated 27.03.2024 pertaining to M/s. Alpine Estates

I, Soham Satish Modi, Partner of M/s. Alpine Estates hereby authorizes and appoint H N A & Co LLP, Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- a. To act, appear and plead in the above-noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- b. To sign, file verify, and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits, etc., as may be deemed necessary or proper in the above proceedings from time to time.
- c. To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes. This authorization will remain in force till it is duly revoked by me/us.

Executed this on 09.12.2024 at Hyderabad.

For ALPINE ESTATES


Partner
Signature

I the undersigned partner of M/s H N A & Co LLP, Chartered Accountants, do hereby declare that the said M/s H N A & Co LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the CGST Act, 2017. I accept the above-said appointment on behalf of M/s H N A & Co LLP. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 09.12.2024

Address for service:

H N A & Co. LLP

(Formerly known as Hiregange & Associates LLP,

Chartered Accountants,

4th Floor, West Block, Anushka Pride,

Above Himalaya Book World

Road Number 12, Banjara Hills,

Hyderabad, Telangana 500034

For H N A & Co. LLP

Chartered Accountants

Lakshman Kumar K

Partner (M.No.241726)

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

S.No.	Name	Qualification	Membership No.
1	Sudhir V S	CA	219109
2	Venkata Prasad P	BA LLB	AP/3511/2023
3	Srimannarayana S	CA	261612
4	Akash Heda	CA	269711
5	Revanth Krishna	CA	262586
6	Manikanta P	CA	277705
7	Shiv Mohan Reddy	CA	267701
8	Asha Latha	CA	280346