companies and financial institutions

I2 AMOUNT PAYABLE UNDER RULE 6 (3) OF THE CENVAT CREDIT RULES, 2004

Sl No.	Quarter	Apr-Jun	Jul-Sept
I 2.1	Value of exempted goods cleared	0	0
I 2.2	Value of exempted services provided	0	0
I 2.3	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by debiting CENVAT Credit account	0	0
I 2.4	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by cash	0	0
I 2.5	**Total amount paid under Rule 6(3) of CENVAT Credit Rules, 2004 I2.5 = I2.3 + I2.4**	0	0

I 3 CENVAT CREDIT TAKEN AND UTILISED

I 3.1 DETAILS OF CENVAT CREDIT OF SERVICE TAX AND CENTRAL EXCISE DUTY TAKEN AND UTILIZATION THEREOF-

Sl No.	Details of Credit	Apr-Jun	Jul-Sept
I 3.1.1	Opening Balance	0	0
I 3.1.2	Credit taken		
I 3.1.2.1	on inputs	0	0
I 3.1.2.2	on capital goods	0	0
I 3.1.2.3	on input services received directly	0	0
I 3.1.2.4	as received from Input Service Distributor	0	0
I 3.1.2.5	from inter unit transfer by a LTU	0	0
I 3.1.2.6	any other credit taken, (please specify)	0	0
I 3.1.2.7	**TOTAL CREDIT TAKEN I 3.1.2.7 = (I 3.1.2.1 + I 3.1.2.2 + I 3.1.2.3 + I 3.1.2.4 + I 3.1.2.5 + I 3.1.2.6)**	0	0
I 3.1.3	Credit Utilised		
I 3.1.3.1	for payment of Service Tax	0	0
I 3.1.3.2	for payment of Education Cess on taxable services	0	0
I 3.1.3.3	for payment of Secondary And Higher Education Cess on taxable services	0	0
I 3.1.3.4	for payment of excise or any other duty	0	0
I 3.1.3.5	towards clearance of input goods and capital goods removed as such or after use	0	0
I 3.1.3.6	towards inter unit transfer to LTU	0	0
I 3.1.3.7	for Payment of amount under Rule 6(3) of the Cenvat Credit Rules, 2004	0	0
I 3.1.3.8	for any other payments/adjustments/reversal, (please specify)	0	0
I 3.1.3.9	**TOTAL CREDIT UTILISED I 3.1.3.9 = (I 3.1.3.1 + I 3.1.3.2 + I 3.1.3.3 + I 3.1.3.4 + I 3.1.3.5 + I 3.1.3.6 + I 3.1.3.7 + I 3.1.3.8)**	0	0
I 3.1.4	**Closing Balance of CENVAT credit I 3.1.4={(I 3.1.1 + I 3.1.2.7)-I 3.1.3.9}**	0	0

I 3.2 DETAILS OF CENVAT CREDIT OF EDUCATION CESS TAKEN AND UTILISATION THEREOF-

Sl No.	Details of Credit	Apr-Jun	Jul-Sept
I 3.2.1	**Opening Balance of Education Cess**	0	0
I 3.2.2	**Credit of Education Cess taken**		
I 3.2.2.1	on inputs	0	0
I 3.2.2.2	on capital goods	0	0
I 3.2.2.3	on input services received directly	0	0
I 3.2.2.4	as received from Input Service Distributor	0	0
I 3.2.2.5	from inter unit transfer by a LTU	0	0
I 3.2.2.6	for any other credit taken,	0	0

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	(please specify)		
I 3.2.2.7	Total credit of Education Cess taken I 3.2.2.7 = (I 3.2.2.1 + I 3.2.2.2 + I 3.2.2.3 + I 3.2.2.4 + I 3.2.2.5 + I 3.2.2.6)	0	0
I 3.2.3	Credit of Education Cess Utilised		
I 3.2.3.1	for payment of Education Cess on goods & services	0	0
I 3.2.3.2	towards payment of Education Cess on clearance of input goods and capital goods removed as such or after use	0	0
I 3.2.3.3	towards inter unit transfer to LTU	0	0
I 3.2.3.4	for any other payments/adjustments/reversal , (please specify)	0	0
I 3.2.3.5	Total credit of Education Cess utilised I 3.2.3.5 = (I 3.2.3.1 + I 3.2.3.2 + I 3.2.3.3 + I 3.2.3.4)	0	0
I 3.2.4	Closing Balance of Education Cess I 3.2.4 = {(I 3.2.1 + I 3.2.2.7) - I 3.2.3.5 }	0	0

I 3.3 DETAILS OF CENVAT CREDIT OF SECONDARY AND HIGHER EDUCATION CESS (SHEC) TAKEN & UTILIZATION THEREOF-

Sl No.	Details of Credit	Apr-Jun	Jul-Sept
I 3.3.1	Opening Balance of SHEC	0	0
I 3.3.2	Credit of SHEC Cess taken		
I 3.3.2.1	on inputs	0	0
I 3.3.2.2	on capital goods	0	0
I 3.3.2.3	on input services received directly	0	0
I 3.3.2.4	as received from Input Service Distributor	0	0
I 3.3.2.5	from inter unit transfer by a LTU	0	0
I 3.3.2.6	any other credit taken, (please specify)	0	0
I 3.3.2.7	Total credit of SHEC taken I 3.3.2.7 = (I 3.3.2.1 + I 3.3.2.2 + I 3.3.2.3 + I 3.3.2.4 + I 3.3.2.5 + I 3.3.2.6)	0	0
I 3.3.3	Credit of SHEC Utilised		
I 3.3.3.1	for payment of SHEC on goods & services	0	0
I 3.3.3.2	towards payment of SHEC on clearance of input goods and capital goods removed as such or after use	0	0
I 3.3.3.3	towards inter unit transfer to LTU	0	0
I 3.3.3.4	for any other payments/adjustments/reversal , (please specify)	0	0
I 3.3.3.5	Total credit of SHEC utilised I 3.3.3.5 = (I 3.3.3.1 + I 3.3.3.2 + I 3.3.3.3 + I 3.3.3.4)	0	0
I 3.3.4	Closing Balance of SHEC I 3.3.4 = { (I 3.3.1 + I 3.3.2.7) - I 3.3.3.5 }	0	0

I3.4 DETAILS OF CENVAT CREDIT OF KRISHI KALYAN CESS TAKEN & UTILISATION THEREOF â!!!

Sl No.	Details of Credit	Apr-Jun	Jul-Sept
I 3.4.1	Opening Balance of Krishi Kalyan Cess	0	0
I 3.4.2	Credit of Krishi Kalyan Cess taken		
I 3.4.2.1	on input services received directly	0	0
I 3.4.2.2	as received from Input Service Distributor	0	0
I 3.4.2.3	Any other credit taken (please specify)		0
I 3.4.2.4	Total credit of Krishi Kalyan Cess taken I3.4.2.4= (I3.4.2.1+I3.4.2.2+I3.4.2.3)	0	0
I 3.4.3	Credit of Krishi Kalyan Cess utilised		
I 3.4.3.1	for payment of Krishi Kalyan Cess on services	0	0
I 3.4.3.2	for any other payments/adjustments/ reversal (please specify)		0
I 3.4.3.3	Total credit of Krishi Kalyan Cess utilised I3.4.3.3= (I3.4.3.1+I3.4.3.2)	0	0
I 3.4.4	Closing Balance of Krishi Kalyan Cess I3.4.4={(I3.4.1+I3.4.2.4)-I3.4.3.3}	0	0

PART - K SELF ASSEESSMENT MEMORANDUM

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(a) I/We declare that the above particulars are in accordance with the records and books maintained by me/us and are correctly stated.	Yes
(b) I/We have assessed and paid the Service tax and/or availed and distributed CENVAT credit correctly as per the provisions of the Finance Act, 1994 and the Rules made thereunder.	Yes
(c) I/We have paid duty within the specified time limit and in case of delay, I/We have deposited the interest leviable thereon.	Yes
(d) I/We have filed this Return within the specified time limit and in case of delay, I/We have deposited the amount towards late filing as prescribed under Rule 7C of ST Rules	Yes
(e) I have been authorised as a person to file the return on the behalf of Service Provider/Service Receiver/ Input Service Distributor, as the case may be	Yes

Name	soham modi		
Place	hyderabad	Date	13/02/2018
Revised Date			

PART - I If the return has been prepared by Service Tax Return Preparer or Certified Facilitation Center(hereinafter referred to as 'STRP/CFC'), furnish further details as below

(a)	Identification No. of STRP/CFC	
(b)	Name of STRP/CFC	

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ACES Application Processing Time : <.1 Second

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Annexure-11

కస్టమ్స్ మరియు సెంట్రల్ టాక్స్ కమీషనర్ కార్యాలయం (అప్పీల్స్-II)
7 వ అంతస్తు, GST భవన్: LB స్టేడియం రోడ్, బషీర్‌బాగ్, హైదరాబాద్, పిన్-500004
सीमा शुल्क व केन्द्रीय कर (अपील्स) आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX (APPEALS-II)
सातवाँतल,केन्द्रीयशुल्कभवन7th Floor, Kendriya Shulk Bhavan,
एलबीस्टेडियमरोडकेसामने,बशीरबाग,हैदराबाद – 500 004
opp. L.B.Stadium, Basheerbagh, Hyderabad-500 004
Tel No. 040- /.Fax No.040--

अपीलसं: Appeal No.13/2022(SC)ST /1204
OIA No. HYD-SVTAX-SC-AP2-060-2022-23-ST Dt. 29.11.2022
DIN: 20221156DN000000EBBF

अपीलआदेशसं: ORDER-IN-APPEAL

जारीकर्ता: श्री. प. देवराज, आयुक्त, सीमा शुल्क व केन्द्रीय कर (अपील्स)
Passed by Shri P.Devaraj, Commissioner, Customs & Central Tax (Appeals)

प्रस्तावना PREAMBLE

1 आदेश जनिके नाम जारी कयिा गया है उस व्यक्तकि के नजिी उपयोग के लएि यह प्रतमिुफ्त में दी जाती है। This copy is granted free of cost for the private use of the person to whom it is issued.

2.(a) कोई भी नरि्धारती इस आदेश से असहमत हो तो वे वत्ति अधनियिम, 1994 की धारा 86 के अंतर्गत सीमाशुल्क, उत्पाद शुल्क व सेवाकर अपील अधकिरण, क्षेत्रीय बेंच, प्रथम तल, हैदराबाद मेट्रो जल आपूर्त और सीवरेज बोर्ड इमारत (पीछे के हस्सि), खैरताबाद, हैदराबाद , तेलंगाना-500004 के समक्ष अपील दायर कर सकते हैं। Any assessee aggrieved by this order may file an appeal under Section 86 of the Finance Act, 1994 to the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench 1st Floor, HMWSSB Building (Rear Portion), Khairatabad, Hyderabad, T.S.-500004.

2.(b) केन्दरीय उत्पाद शुल्क अधनियिम,1944 की धारा 35 एफ़ के खंड (iii) के अनुसार, धारा 85 की उप-धारा (5) में संदर्भति आदेश या नरि्णय के वरिुद्ध अपील के लएि, अपीलकर्ता को नरि्णय या जसि आदेश के वरिुद्ध अपील की गई हो उसके अनुसरण के लएि कर का, ऐसे मामले में जहां कर या कर और दंड ववािदति हो, या दंड का, जहां ऐसा दंड ववािदति हो, दस प्रतशित जमा करना होगा : सेवा कर के मामलों में, एफ़ ए, 1994 की धारा 83 के प्रभाव से अधनियिम की धारा 35 एफ़ लागू है। As per clause (iii) of Section 35F of the CEA, 1944, the appeal against the decision or order referred to in sub-section (5) of section 85, the appellant has to deposit ten per cent of the tax, in case where tax or tax and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Section 35F of the Act is applicable to service tax case by virtue of Section 83 of FA, 1994.

3. उप धारा (1) [या उप धारा (2) या उप धारा (2ए)] के अंतर्गत प्रत्येक अपील जसि आदेश के वरिुद्ध अपील कयिा जाना हो उस आदेश के नरि्धारती दवारा प्राप्त करने की तारीख से तीन/ चार महीने के भीतर (मुख्य आयुक्तों या आयुक्तों की समति) के समक्ष, जैसे भी मामला हो, दायर कयिा जाना चाहएि। Every appeal under sub-section(1) [or sub-section(2) or sub-section(2A)] of Section 86 of FA,1994 shall be filed within three/four months of the date on which the order sought to be appealed against was received by the assessee / the [Committee of the Commissioners], as the case may be.

4. पैरा 2 में उल्लखिति अपील एस टी 5/ एस टी 7 प्रोफॉर्मा में चार प्रतयिों में जसि आदेश के वरिुद्ध अपील कयिा जाना हो उस आदेश के नरि्धारती के पास पहुँचने की तारीख से तीन/चार महीने के भीतर कयिा जा सकता है। जसि आदेश के वरिुद्ध अपील कयिा

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जाना चाहता हो और अपील करने के लिए लिखित मूल आदेश की उस आदेश की चार प्रतियाँ संलग्न होने चाहिए (जिसमें से एक प्रति प्रमाणित प्रति होने चाहिए). The appeal, as referred to in Para 2 above, should be filed in S.T.5/S.T.-7 proforma in quadruplicate; within three/four months from the date on which the order sought to be appealed against was communicated to the party /Deptt.,preferring the appeal and should be accompanied by four copies each (of which one should be a certified copy), of the order appealed against and the Order-in-Original which gave rise to the appeal.

5. अपील के साथ ट्रिब्यूनल के दक्षिणी बेंच के सहायक रजिस्ट्रार के पक्ष में जहां ट्रिब्यूनल स्थित है वहाँ के किसी भी राष्ट्रीयकृत बैंक की शाखा से प्राप्त किए गए रेखांकित मांग ड्राफ्ट संलग्न होने चाहिए और अधिनियम की धारा 86 के अंतर्गत विनिर्दिष्ट शुल्क के भुगतान का प्रमाण भी संलग्न होने चाहिए। देय शुल्क निम्नलिखित है। The appeal should also be accompanied by a crossed bank draft drawn in favour of the Assistant Registrar of the Tribunal, drawn on a branch of any nominated public sector bank at the place where the Tribunal is situated, evidencing payment of fee prescribed in Section 86 of the Act. The fees payable are as under:-

(क) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और ब्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख या उससे कम हो तो, रुपये एक हज़ार; (a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(ख) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और ब्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख से अधिक, लेकिन रुपये पचास लाख से कम, हो तो, रुपये पाँच हज़ार;

(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(ग) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और ब्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड, रुपये पचास लाख से अधिक हो तो, रुपये दस हज़ार;

(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

5(i) उसी की धारा 86 की उप धारा (4) के अंतर्गत बताए गए कुल आपत्तियों के ज्ञापन के संबंध में कोई शुल्क देय नहीं है। No fee is payable in respect of the Memorandum of Cross Objections referred to in Sub-Section (4) of Section 86 ibid.

6. अपीलीय ट्रिब्यूनल के समक्ष प्रस्तुत किए गए सभी आवेदनपत्र के साथ: Every application made before the Appellate Tribunal:

(क) रोक की मंजूरी के लिए अपील या गलती को सुधारने के लिए अथवा किसी अन्य प्रयोजन के लिए आवेदन पत्र; या

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(ख) किसी अपील या आदेश को पुन: स्थापित करने के लिए उसके साथ रुपए पाँच सौ का शुल्क होने चाहिए। (b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:

6(i) इस उप धारा के अंतर्गत आयुक्त द्वारा दायर किए गए आवेदन के मामले में कोई शुल्क देय नहीं है। No fee is payable in case of an application filed by Commissioner this sub-section.

7. केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 और केन्द्रीय उत्पाद शुल्क नियमावली,

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M/s. Modi & Modi Constructions, 5-4-187/3 & 4, 2nd floor, Soham Mansion, M.G. Road, Secunderabad - 500 003	Appellant
The Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad	Respondent

2002 तथा सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलीय ट्रब्यूनल (प्रक्रिया) नियमावली, 1982 में शामिल इससे और अन्य संबन्धित मामलों को नियंत्रित करने वाले प्रावधानों की ओर ध्यान आकर्षित किया जाता है। Attention is invited to the provisions governing these and other related matters, contained in the Central Excise Act, 1944 and Central Excise Rules, 2002 and the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

These proceedings arise out of an appeal filed by M/s. Modi & Modi Constructions, 5-4-187/3 & 4, 2nd floor, Soham Mansion, M.G. Road, Secunderabad - 500 003 (hereinafter referred to as "appellants") against Order-in-Original No. 09/2021-22 (S.Tax-Adjn.) dated 23.12.2021 (hereinafter referred as "impugned order") passed by the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad (hereinafter referred to as "respondent").

2. The appellants are registered with Service Tax Department vide Registration No. AAKFM7214NST001 for payment of service tax under the categories of "works contract service" and "construction of residential complex service". The appellants entered into (i) sale deed for sale of undivided portion of land together with semi-finished portion of the villa and (ii) agreement for construction with their customers. On execution of the sale deed the right in a property gets transferred to the customer and hence the construction service rendered by the appellants thereafter to their customers under agreement for construction is taxable under service tax law as there exists service provider and service receiver relationship between them. As transfer of property in goods in execution of the said construction agreement is involved, it appeared that the services rendered by the appellants after execution of the sale deed against agreements of construction to each of their customers to whom the land was already sold are taxable under "works contract service". Accordingly, the following show cause notices were issued to the appellants:

Sl.No.	SCN OR No. and date	Period	Amount of service tax proposed to be	OIO No. & date

A051

			demanded	
1	HQPOR No.34/2010-Adjn.(ST) dated 12.04.2020	2009	6,04,187/-	45/2010-ST dt.29.10.2020 (confirmed)
2	OR No.59/2011-Adjn(ST) Gr.X dt.23.04.2011	2010	12,06,447/-	48/2012-Adjn(ST)ADC dt.31.08.2012 (confirmed)
3	OR No.53/2012-Adjn (ADC) dt.24.04.2012	2011	27,61,048/-	Pending adjudication
4	OR No.81/2013-Adjn.(ST)(ADC) dt.02.12.2013	01/2012 to 06/2012	11,87,407/-	Pending adjudication
5	OR No.109/2014-Adjn(ST)ADC dt.24.09.2014	07/2012 to 03/2014	38,35,321/-	Pending adjudication
6	OR No.25/2016-Adjn(ST)(JC) dt.18.04.2016	04/2014 to 03/2015	6,30,349/-	Pending adjudication

As per the information furnished by the appellants vide their letter dated 15.02.2018, it was observed that the appellants had rendered taxable services under the category of "works contract" service during the period April 2015 to June 2017. The appellants had rendered services for a taxable value of Rs.7,50,49,757/-. After deduction of VAT of Rs.40,12,405/-, the taxable value worked out to Rs.7,10,37,352/- and service tax payable thereon worked out to Rs.42,07,651/-. The appellants were, therefore, issued a show cause notice proposing demand of service tax of Rs.42,07,651/- under "works contract service" for the period April 2015 to June 2017 in terms of Section 73(1) of the Finance Act, 1994 along with interest payable thereon under Section 75 ibid. The show cause notice also proposed to impose penalty on the appellants under Section 76 and 77 of the Finance Act, 1994 for contravention of rules and provisions of the Finance Act, 1994.

3. The respondent, after following due process of law, passed the impugned order confirming demand of service tax of Rs.42,07,651/- as proposed in the notice along with interest payable thereon. Further, the respondent imposed a penalty of Rs.4,20,765/- and Rs.10,000/- under Sections 76 and 77 respectively of the Finance Act, 1994.

4. Having been aggrieved by the impugned order, the appellants filed the present appeal. Personal hearing in this case was held on 11.10.2022. The learned Chartered Accountant representing the appellant appeared for personal hearing and stated that they have constructed based on agreement which was entered prior to 01.01.2013 and completion certificate need not be obtained. They have obtained the completion certificate from CA. Hence, there is no service tax liability.

Discussion & Findings:

5. I have gone through the facts of the case, the appeal memorandum and the submissions made by the appellants during personal hearing held in the case. The appellants entered into sale deeds for sale of undivided portion of land together with semi-finished portion of the villa and agreement of construction with their customers. As seen from Annexure to the show cause notice issued to the appellants for the period 2015-16 to 2017-18 (upto June 2017), the appellants received gross receipts of Rs.7,50,49,757/- and paid an amount of Rs.40,12,405/- towards VAT. Hence, net taxable value for the said period is worked out to be Rs.7,10,37,352/- and service tax payable thereon under works contract service is worked out to be Rs.42,07,651/-. Accordingly, the show cause notice issued to the appellants proposed to demand of service tax of Rs.42,07,651/- along with interest and imposition of penalty on the appellants under the provisions of the Finance Act, 1944. The appellants, having been aggrieved by the impugned order confirming the proposals made in the show cause notice, filed the present appeal.

6. The appellants submitted that they are engaged in sale of residential villas to prospective buyers during and after construction. The appellants detailed nature of transactions undertaken by them as under:

(i) Sale of villas after receipt of Completion Certificate without any agreement of construction: In these transactions, sale deed was executed for the entire sale consideration without entering into any construction agreement. The appellants have not paid any service tax on these transactions on the ground that the villas sold after completion certificate are not leviable to service tax.

(ii) Sale of villas after receipt of Completion Certificate, with agreement of construction: In these cases, the appellants sold the villas by entering into sale deed but at request of the customers for making extensive changes to the villas, they entered into agreements of construction to make changes. In most of these cases, sale deed is executed for the entire sale consideration and in some cases sale deed is executed for semi-finished construction along with an agreement of construction. The appellants have not paid any service tax on sale deed value and paid service tax only on amounts received towards construction agreements on the ground that villas sold after Completion Certificate are not leviable to service tax.

(iii) Sale of Villas before receipt of Completion Certificate: In these transactions, the appellants executed sale deed for semi-finished villas along with an agreement for construction. Sale deed is registered and appropriate 'Stamp Duty' was discharged on the same. The appellants discharged service tax on agreement of construction value after availing deduction towards sale deed value and non-taxable receipts.

7. The appellants contended that the issuance of show cause notice and the impugned order were without authority of law on the ground that provisions of the Finance Act, 1994 which authorises levy and collection of service tax were repealed in terms of Section 19 of Constitution (one hundred and first amendment) Act, 2016 read with Section 173 of the CGST Act, 2017. It is the case of the appellants that Section 174 of the CGST Act, 2017 only saves the proceedings already instituted before the enactment of the CGST Act, 2017 whereas issuance of the impugned notice and order was initiated after 01.07.2017 and therefore, the present proceedings do not sustain. I do not find merit in the said contention of the appellants. As per sub-section (2) of Section 174 of the CGST Act, 2017, the amendment of the Finance Act, 1994 to the extent mentioned in the sub-section (1) or section 173 shall not, inter alia, affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed. Hence, I reject the appellant's contention in this regard.

8. The appellants contended that the impugned show cause notice stated that the services rendered after execution of sale deed against agreement of construction are taxable and it never proposed to demand service tax on sale deed values. They argued that the show cause notice on one hand stated that the appellants are liable to pay service only on the construction services rendered by them post execution of sale deed and on other hand for quantifying the taxable value, it has considered the entire receipts. Thus, the appellants argued that the impugned order has travelled beyond scope of the show cause notice. Although the show cause notice issued to the appellants stated that on execution of sale deed, right in a property gets transferred to customer and the construction service rendered by the appellants thereafter to their customers under agreement of construction is taxable, nowhere it is stated that the sale deed value shall not form part of the taxable value. While computing the taxable value of the service provided by the appellants, the show cause notice has rightly considered

sale deed value as part of taxable value in conformity with provisions of the law. In terms of Section 66E(b) of the Finance Act, 1994, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority is a declared service. Therefore, in all cases where consideration in respect of any complex, building or structure is received before issuance of a completion certificate by the Competent Authority, the construction activity undertaken for construction of such complex or building is deemed to be a taxable service in terms of provisions of Section 66E(b) ibid and the service provider is liable to pay service tax even on sale value of the complex or building. Therefore, in the instant case, the consideration received by the appellants on the semi-finished villas sold before issuance of completion certificate by the Competent Authority does form part of taxable value for the purpose of working out their tax liability. I, therefore, hold that the impugned order has not travelled beyond scope of the notice as sought to be projected by the appellants and I reject their contention in this regard.

9. The appellants contended that the respondent has not at all made an attempt to understand the transaction undertaken by them and the scope of different agreements entered with the customers; that without verifying the scope of agreements the impugned order has simply confirmed the demand by extracting various definitions of Finance Act, 1994 without giving any reason as to why the amounts received by the appellants are taxable. But, as seen from the impugned order, the respondent has given detailed findings in this regard. As held by the respondent in the impugned order, the activity undertaken by the appellants is a declared service in terms of Section 66E(b) of the Finance Act, 1994 as they received consideration in respect of the villas constructed before issuance of completion certificate. Further, as per Section 66E(h) of the Finance Act, 1994, service portion in the execution of works contract is also a declared service. In terms of Section 65B (54) of the Finance Act, 1994, "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. In the instant case, as the appellants have paid VAT, the respondent concluded that their construction activity involve transfer of property in goods which is leviable to tax as sale of goods and thus satisfy the definition of "works contract" service. Accordingly, the respondent considered the service provided by the appellants as a taxable service and confirmed the demand of service tax. Hence, I reject the appellants' contention in this regard.

10. The appellants further argued that villas sold after receipt of completion certificate are not leviable to service tax. The appellants submitted that completion certificate from the Chartered Engineer was obtained on 05.05.2013 for 33 villas and applied for Occupancy Certificate on 05.11.2014 and 20 villas were booked after this date and sale deed is executed for the entire sale value of villas. They contended that in such circumstances, no service tax is leviable on the amounts received towards said villas since it is sale of immovable property and it was specifically provided in Section 66E(b) of the Finance Act that service tax is not leviable for the villas booked after issuance of completion certificate. Even during the course of proceedings before the respondent, the appellants raised the same contention. The respondent, however, rejected the appellants' plea on the ground that the completion certificates submitted by the appellants were issued by Chartered Engineer / Registered Valuer and not by the Competent Authority of Government as specified and as such the completion certificates obtained by the appellants from the Chartered Engineer / Registered Valuer / Architect are not valid and proper documents for this purpose. In this connection, the appellants contended that as per the provisions of Telangana Building Rules, 2012, there is no requirement to apply for completion certificate from the Municipal Authority; that the said rules only prescribe that the builder or developer has to obtain an "occupancy certificate" and not completion certificate. The appellants further argued that completion certificate and occupancy certificate are entirely different; that completion certificate certifies that the building is completed as per the approved plan and meets other requirements such as distance from road, height of the building etc., while the Occupancy Certificate certifies that the building has complied with all the required building standards, local laws and is safe to occupy. The appellants further submitted that Section 66E(b) refers to Completion Certificate but not the Occupancy Certificate and since there is no requirement to obtain completion certificate from the Government or any authority, they had obtained the same from a Chartered Engineer who is a professional capable of issuing such certificate and hence confirmation of demand is not correct and needs to be dropped.

11. The appellants quoted Villa No.85 booked on 28.05.2016 as one of the villas sold after receipt of Completion Certificate without any agreement of construction. In respect of the said villa No.85, the appellants produced a copy of Booking From dated 28.05.2016. As seen from the Booking From, they agreed to sell the villa for a price of Rs.38 lakhs and registration, VAT, Service Tax and Stamp duty are chargeable extra. As per the Booking form, the booking amount is indicated as Rs. 25,000/- and the consideration is required to be paid in instalments on 28.05.2016, 28.06.2016, 28.07.2016 and one instalment within 7 days of completing flooring, bathroom tiles, doors, windows and first coat of paint and the last instalment on completion. The Booking Form clearly indicates that as on the date of booking of the villa, it was still

under construction and completion certificate could not have been obtained. Hence, the appellants' contention with regard sale of the villa after issue of completion certificate is without basis and liable to be rejected. Therefore, the appellants' claim with regard to obtaining completion certificate from the Chartered Engineer in respect of 33 villas on 05.05.2013 and booking of villas after that date is liable to be rejected.

12. The appellants contended that sale of semi-finished villa is transfer of immovable property which is not leviable to service tax and confirmation of demand in this regard is not sustainable. The appellants further contended that there is no service tax levy on sale of semi-finished villa as the same was excluded from the definition of 'service' under Section 65B(44) of the Finance Act, 1994. The appellants further argued that semi-finished villa represents the construction work already done prior to booking of villa by the prospective buyer and the work undertaken till that time of entering agreement of sale is nothing but work done for self as there is no service provider or receiver. But, as already discussed supra, in all cases where consideration in respect of any complex, building or structure is received before issuance of a completion certificate by the Competent Authority, the construction activity undertaken for construction of such complex or building is deemed to be a taxable service in terms of provisions of Section 66E(b) of the Finance Act, 1994 and the service provider is liable to pay service tax even on sale value of the complex or building. Hence, I reject the appellants' contention in this regard. Further, I find that the case laws relied on by the appellants in support of their contention are distinguishable on facts and law and do not help them in support of their contention.

13. The appellants contended that they have not collected service tax from their customers and hence they are entitled to benefit of paying service tax on cum-tax value. But, as seen from the Booking Form produced by the appellants in respect of Villa No.85, it clearly indicates that the appellants indicated that service tax is payable in addition to consideration towards sale of the villa. This fact on record indicates that the appellants charged service tax in respect of the villas sold. Hence, their claim for cum-tax value benefit is liable to be rejected.

14. In view the above, I do not find any infirmity in the impugned order confirming demand of service tax along with interest payable by the appellants and imposition of penalty on them under the provisions of the Finance Act, 1994. Hence, I uphold the impugned order and reject the appeal filed by the appellants.

15. In view the above discussion and findings, I pass the following order:

ORDER

The impugned order is upheld and the appeal filed by the appellants is dismissed.

29.11.2022

(प. देवराज) (P.Devaraj)
आयुक्त Commissioner

To
M/s. Modi & Modi Constructions,
5-4-187/3 & 4, 2nd floor,
Soham Mansion, M.G. Road,
Secunderabad - 500 003

[By Registered Post with Ack. due / SPEED POST]

Copy Submitted to the Chief Commissioner, Central Tax and Customs, Hyderabad Zone, Hyderabad.

Copy to:

1. The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, Basheerbagh, Hyderabad.
2. The Assistant Commissioner of Central Tax, Secunderabad GST Division, Salike Senate, D.No. 2-4-416 & 417, Ramgopalpet, M.G. Road, Secunderabad - 500 003.
3. Master copy.

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ON INDIA GOVERNMENT SERVICE

स्पीड पोस्ट
SPEED POST

(13)

rom
Office of the Commissioner of
Customs & Central Tax
Appeals-II Commissionerate
7th Floor, GST Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad-500 004.

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SECUNDERABAD S.P.POST 22.12.22

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Annexure - III

6/C

Hiregange
& Associates LLP
Chartered Accountants

Date: 02.06.2022
To
The Commissioner of Central Tax (Appeals-II),
07th Floor, GST Bhavan,
L.B. Stadium Road, Basheer Bagh,
Hyderabad – 500 004.
Dear Sir,

Sub: Submission of challan evidencing pre-deposit payment

Ref:

a. Order-in-Original No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021
b. Appeal filed dated 29.04.2022 pertaining to M/s. Modi & Modi Constructions.

1. We have been authorized by M/s. Modi & Modi Constructions to submit an appeal to the above referred Order-in-Original No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021 and represent before your good office and to do necessary correspondence in the above referred matter.
2. In this regard, we would like to bring to your notice that we have filed the appeal against above referred order on 29.04.2022 (Copy of acknowledgment enclosed). However, we were not able to submit the pre-deposit challan due to issues in www.cbic-gst.gov.in portal. Now we are able to pay the pre-deposit and have paid the same on 27.05.2022.
3. With respect to proof for payment of mandatory Pre-deposit, we would like to bring to your notice that OIO No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021 confirmed the demand of Rs.42,07,651/- and the 7.5% of the demand confirmed is coming to Rs. 3,15,573/-.
4. In this regard, we would like to bring to your notice we have paid the above referred pre-deposit as follows
   a. Rs.2,59,503/- while filing the ST-3 returns. In this regard, we would like to bring to your notice that the above referred Order-in-Original has

Hiregange & Associates LLP Chartered Accountants Hyderabad

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+91 040 2331 8128 | venkataprasad@hiregange.com | www.hiregange.com
Bengaluru (Jayanagar, Whitefield) | Hyderabad | Visakhapatnam | Gurugram (NCR) | Mumbai | Pune |

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considered the entire receipts declared in ST-3 returns and confirmed the demands. This shows that the demand has been confirmed even on the receipts on which service tax has been already paid while filing the ST-3 returns. Hence, the amount paid in ST-3 returns can be adjusted towards pre-deposit amount and the copy of ST-3 returns are enclosed along with the appeal. The copy of ST-3 returns was enclosed as Annexure IX to appeal memorandum at Page No.125to 172.

b. Rs.56,071/- vide challan dated 27.05.2022 (Copy enclosed to this letter).

5. We kindly request your good self to consider the above explanations and treat the same as proof for payment of mandatory Pre-deposit against appeal filed dated 29.05.2022.

We shall be glad to furnish any further information/clarification required in this regard. Kindly acknowledge the receipt of the above and do the needful.

Thanking You,

Yours faithfully,

For M/s. Hiregange & Associates LLP
Chartered Accountants

R. Lakshman Kumar

CA Lakshman Kumar K
Designate Partner

Hiregange & Associates LLP Chartered Accountants Hyderabad

Enclosures:

a. Appeal filed acknowledgement

b. Challan No.20220521150142155353 dated 27.05.2022

Commissioner of Central Excise & GST

02 JUN 2022

A06)

O/C

Hiregange
& Associates LLP
Chartered Accountants

Date: 29.04.2022

To
The Commissioner (Appeals-II),
07th Floor, GST Bhavan,
L.B. Stadium Road, Basheer Bagh,
Hyderabad – 500 004.

Dear Sir,

Sub: Filing of Appeal to Appellate authority in Form ST-4.

Ref: Order-in-Original No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021 pertaining to M/s. Modi & Modi Constructions

1. We have been authorized by M/s. Modi & Modi Constructions to submit an appeal to the above referred Order-in-Original No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021 and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the appeal.
2. In this regard, we are herewith submitting the appeal in Form ST-4 along with authorization letter and other annexures referred in the appeal along with this letter.
3. Further, we would like to bring to your notice that the time limit for filing the appeal against the order of Appellate Authority is 2 months from the date of receipt of order as per Section 86 of the Finance Act, 1994 i.e., 2 months from 23.12.2021 and the same was expired on 23.03.2022.
4. In this regard, we would like to state that, the Hon'ble Supreme Court taking the Suo-Moto cognizance of the difficulties faced due to the rapidly escalating corona virus outbreak (COVID-19), vide order dated 23.03.2020 read with order dated 08.03.2021 and read with order dated 27.04.2021 had held that the limitations from 14.03.2020 shall stand extended till further orders, which was brought to an end permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. Thereafter, considering the second wave, the Hon'ble SC further extended the relaxation till 02.10.2021, which was finally

4th Floor, West Block, Sri Sai Anushka Pride, Beside SBI Bank, Above Lawrence & Mayo store, Road Number 2, Banjara Hills, Hyderabad, Telangana - 500 034, INDIA
T: 040 2335 8128 | E: venkatprasad@hiregange.com | www.hiregange.com
Bengaluru (Jayanagar, Whitefield) | Hyderabad | Visakhapatnam | Gurugram (NCR) | Mumbai | Pune | Chennai | Guwahati | Vijayawada | Kolkata | Raipur | Kochi | Indore

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extended till 28.08.2022 vide the Hon'ble Supreme Court vide Misc Application no. 21/2022 in MA 665/2021 in SMW(C) No. 03/2020 dated 10.01.2022 for the purpose of limitation as may be prescribed under the general or special laws. Further the Hon'ble court has stated that:

"In case in cases where the limitation would have expired during the period between 15.03.2020 - 28.02.2022, Notwithstanding the actual balance period of limitation remaining all persons shall have a limitation period of 90 days from 01.03.2022, in the event the actual balance period of limitation remaining with effect from01.03.2022 is greater than 90 days, that longer period shall apply."

5. On conjoint reading of the above and considering the latest limitation order issued by the Hon'ble Supreme court as referred above, the period between 15.03.2020 to 28.02.2022 shall be excluded in calculating the limitation in respect of all the proceedings such as the filing of petitions/applications/suits/appeals, in any court/tribunal/forum in India, irrespective of the limitation prescribed under the general law or special law (either central or state), whether condonable or not.
6. Accordingly, the time limit for filing the appeal after considering the Supreme Court Suo Moto Extension will be 28.05.2022. In this regard, we would like to state that the appeal is filed well within the time limit. Therefore, we request your good office to kindly acknowledge the receipt of the appeal, admit and post the hearing at the earliest.

We shall be glad to provide any other information in this regard.

Thanking You,

Yours faithfully,

For M/s. Hiregange & Associates LLP
Chartered Accountants

CA Lakshman Kumar R
Partner Designate

Hiregange & Associates LLP Chartered Accountants Hyderabad

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6	Reply to SCN dated 16.06.2018	II	048-060
7	Show cause notice with annexure dated 16.04.2018	III	061-064
8	Copy of the booking form for villa No. 85	IV	065-065
9	Sale deed dated 04.08.2016	V	066-084
10	Copy of the sale deed and construction agreement dated 28.02.2013 for Villa no. 74	VI	085-119
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13	ST-3 returns for the period April 2015 to June 2017	IX	125-172

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O/C

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Hiregange
& Associates LLP
Chartered Accountants

Date: 29.04.2022
To
The Commissioner (Appeals-II),
07th Floor, GST Bhavan,
L.B. Stadium Road, Basheer Bagh,
Hyderabad – 500 004.
Dear Sir,

Sub: Filing of Appeal to Appellate authority in Form ST-4.

Ref: Order-in-Original No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021 pertaining to M/s. Modi & Modi Constructions

1. We have been authorized by M/s. Modi & Modi Constructions to submit an appeal to the above referred Order-in-Original No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021 and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the appeal.
2. In this regard, we are herewith submitting the appeal in Form ST-4 along with authorization letter and other annexures referred in the appeal along with this letter.
3. Further, we would like to bring to your notice that the time limit for filing the appeal against the order of Appellate Authority is 2 months from the date of receipt of order as per Section 86 of the Finance Act, 1994 i.e., 2 months from 23.12.2021 and the same was expired on 23.03.2022.
4. In this regard, we would like to state that, the Hon'ble Supreme Court taking the Suo-Moto cognizance of the difficulties faced due to the rapidly escalating corona virus outbreak (COVID-19), vide order dated 23.03.2020 read with order dated 08.03.2021 and read with order dated 27.04.2021 had held that the limitations from 14.03.2020 shall stand extended till further orders, which was brought to an end permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. Thereafter, considering the second wave, the Hon'ble S further extended the relaxation till 02.10.202 , which was finally

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extended till 28.08.2022 vide the Hon'ble Supreme Court vide Misc Application no. 21/2022 in MA 665/2021 in SMW(C) No. 03/2020 dated 10.01.2022 for the purpose of limitation as may be prescribed under the general or special laws. Further the Hon'ble court has stated that:

"In case in cases where the limitation would have expired during the period between 15.03.2020 - 28.02.2022, Notwithstanding the actual balance period of limitation remaining all persons shall have a limitation period of 90 days from 01.03.2022, in the event the actual balance period of limitation remaining with effect from01.03.2022 is greater than 90 days, that longer period shall apply."

5. On conjoint reading of the above and considering the latest limitation order issued by the Hon'ble Supreme court as referred above, the period between 15.03.2020 to 28.02.2022 shall be excluded in calculating the limitation in respect of all the proceedings such as the filing of petitions/applications/suits/appeals, in any court/tribunal/forum in India, irrespective of the limitation prescribed under the general law or special law (either central or state), whether condonable or not.
6. Accordingly, the time limit for filing the appeal after considering the Supreme Court.Suo Moto Extension will be 28.05.2022. In this regard, we would like to state that the appeal is filed well within the time limit. Therefore, we request your good office to kindly acknowledge the receipt of the appeal, admit and post the hearing at the earliest.

We shall be glad to provide any other information in this regard.

Thanking You,

Yours faithfully,

For M/s. Hiregange & Associates LLP
Chartered Accountants

CA Lakshman Kumar R
Partner Designate

Hiregange & Associates LLP Chartered Accountants Hyderabad

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FORM ST-4

Form of Appeal to the Commissioner (Appeals-II)

[Under Section 85 of the Finance Act, 1994 (32 of 1994)]

BEFORE COMMISSIONER (APPEALS-II), 7TH FLOOR, L.B STADIUM ROAD, BASHEERBAGH, HYDERABAD-500 004

(1) Appeal No.	..... of 2022
(2) Name and address of the Appellant	M/s Modi & Modi Constructions., 5-4-187/3& 4, 2"d Floor, Soham Mansion, M.G. Road, Secunderabad -500003
(3) Designation and address of the officer Passing the decision or order appealed against and the date of the decision or order	Deputy/Assistant Commissioner of Central Tax and Customs, Secunderabad GST Division & Secunderabad Commissionerate, Salike Senate, D.No.2-4-416 & 417, Ramgopalpet, MG road, Secunderabad-500003. ORDER-IN-ORIGINAL No. 09/2021-22 (S.Tax-Adjn) dated 23.12.2021
(4) Date of Communication to the Appellant of the decision or order appealed against	24.12.2021.
(5) Address to which notices may be sent to the Appellant	M/s Hiregange & Associates, 4th Floor, West Block, Srida Anushka Pride, Above Lawrence and Mayo, Road No.12, Banjara Hills, Hyderabad, Telangana - 500 034 Email: venkataprasad@hiregange.com Mob: +91 89781 14341 **(And also copy to the Appellant)**
(5A)(i) Period of dispute	April 2015- June 2017
(ii) Amount of service tax, if any demanded for the period mentioned in the Col. (i)	42,07,651/- under the section 73 of the Finance Act, 1994.
(iii) Amount of refund if any claimed for the period mentioned in Col. (i)	NA
(iv) Amount of Interest	Interest u/s 75 of Finance Act, 1994.
(v) Amount of penalty	4,20,765/- as per section 76 and 10,000/- under section 77 of the Finance at, 1994.
(vi)Value of Taxable Service for the	NA

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period mentioned in Col.(i)	
(6) Whether Service Tax or penalty or interest or all the three have been deposited.	An amount of Rs. 2,59,503/- was already paid while filing the ST-3 returns and an amount of Rs. 56,070/- was paid vide Challan No. _____ dated _____ which can be adjusted towards pre-deposit under Section 35F of Central Excise Act, 1944.
(6A) Whether the appellant wishes to be heard in person?	NA
(7) Reliefs claimed in appeal	NA

MODI BUILDCONS (P) LTD. SEC'BAD Appellant

A069

BRIEF FACTS OF THE CASE:

A. M/s.Modi & Modi Constructions, Secunderabad (hereinafter referred to as 'Appellant) is mainly engaged in the sale of residential villas to prospective buyers during and after construction.

B. Sale of Flats after receipt of Completion Certificate (CC) without any agreement of construction: In these transactions, sale deed is executed for the entire sale consideration without entering into any construction agreement. As the flats sold after CC is not leviable to service tax, Appellant has not paid any service tax on the same.

Eg: For instance, the villa No. 85 was booked on 28.05.2016 with agreed price of Rs.38,00,000 + taxes and registration charges. The copy of the booking form is enclosed as annexure IV and for the entire amount the sale deed dated 04.08.2016 was executed which is enclosed as annexure V and as seen from the receipt's statements, Appellant received Rs.40,81,851/- which consists of

i. Rs.38,00,000 towards sale deed (Rs.50,000/- was not received during the subject period);
ii. Rs.2,81,300 towards VAT & registration charges and
iii. Rs.50,544/- towards water & electricity connection/deposits;

As the above referred flat is sold after OC, Appellant had not paid any service tax on the same. Further, the amounts received towards VAT, registration charges, water and electricity connections are not leviable to service tax therefore Appellant had not paid any service tax on the same.

C. Sale of Flats after receipt of Completion Certificate (CC) with agreement of construction: In these cases, Appellant is selling the villas by entering into sale deed but the customers are asking to make extensive changes to the villas therefore Appellant is entering into agreement of construction to make changes. In most of the cases, sale deed is executed for the entire sale consideration and in some cases **Sale deed is being executed for semi-finished construction along with an agreement of construction.** As the flats sold after CC is not leviable to service tax, Appellant has not paid any service tax on sale deed value but paid service tax only on amounts received towards construction agreements

D. Sale of Flats before receipt of Completion Certificate (CC): In these transactions, Appellant is executing sale deed for semi-finished flat along with

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an agreement of construction. Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same. Appellant is discharging service tax on agreement of construction value after availing deduction towards sale deed value and non-taxable receipts

Eg: For instance, the Villa No. 74 was booked in the year 2012 wherein the agreement of sale was entered for total consideration of Rs.43,05,000 + taxes + registration charges etc., and the sale deed dated 28.02.2013 was executed for Rs.15,00,000 conveying the title of the land as well the semi-finished flats and balance consideration was agreed towards the construction work to be undertaken as on that date (Rs.28,05,000 vide construction agreement dated 28.02.2013). Copy of the sale deed and construction agreement is enclosed as annexure VI.

E. The details of no of flats booked before OC and after OC are as follows

Particulars	No of Flats
No of Villas booked before receipt of CC (Taxable as the flats are booked before CC)	11
No of Villas booked after receipt of CC (Not-taxable as the flats are booked after CC)	16
No of Villas booked after receipt of CC but with Construction Agreement (Taxable only to the extent of Agreement of Constructions)	4
Total	**31**

F. Completion certificate from the 'chartered engineer' for 33 villas was obtained on 05.05.2013 and applied for Occupancy Certificate (OC) on 05.11.2014 and same is under process.

G. The amount charged from the customers are as under:

i. Value towards the sale deed
ii. Value towards the construction agreement
iii. Other Charges like electricity charges, etc.
iv. Collection of taxes like VAT, Service Tax, Stamp Duty and Registration Charges from the buyer

H. The levy of service tax on such arrangements has seen a fair share of litigation and amendments. The Appellant is also a party to the litigation process and matters for earlier periods are pending at various adjudication/judicial forums.

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I. In July 2012, the service tax law underwent a paradigm shift and importantly, the exemption for personal use available for construction of residential complexes was removed and also the condition of having more than 12 residential units was dispensed with. Accordingly, it became evident that service tax was payable on the construction agreement as per valuation prescribed under Rule 2A of the Service Tax (Determination of Value) Rules, 2012 i.e. on a presumed value of 40% of the contract value. The Appellant regularly discharged the service tax on the said value in normal course. It also discharged service tax on other charges. However, it did not discharge service tax on sale deed value, which is in the nature of immovable property and on the value of taxes collected.

J. The detailed working of the receipts and the attribution of the said receipts was already provided to the Department authorities, identified receipt wise and flat wise. The summary of the same is provided hereunder:

Description	Receipts	Non taxable	Taxable
Sum of towards sale deed	66,085,098	66,085,098	0
Sum of towards agreement of construction	3,426,600	0	3,426,600
Sum of towards other taxable receipts	172,289	0	172,289
Sum of towards VAT, Registration charges, etc	5,365,770	5,365,770	0
Total	75,049,757	71,450,868	3,598,889

K. Accordingly, the value of taxable services constituted 40% of Rs.35,98,889/- i.e. Rs.14,39,555/- and the service tax thereon @ 12.36%/14%/14.5%/15% constituted Rs.2,05,803/-. It was also explained that the actual payment of service tax amounted to Rs.205,803/-.

L. Previously, several SCN's were issued covering the period upto March 2015 with sole allegation that "*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".*

i. Vide Para 3of SCN dated 12.04.2010and Para 2 of the Order adjudicating the said SCN

ii. Vide Para 3 of Second SCN dated 23.04.2011

iii. Vide Para 2 of third SCN dated 24.04.2012

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iv. Vide Para 2 of fourth SCN dated 02.12.2013

v. Vide Para 2 of fifth SCN dated 24.09.2014

vi. Vide Para 2 of sixth SCN dated 18.04.2016

M. In all the above SCN's, there is error in as much including the value of sale deeds within the ambit taxable value while alleging service tax is liable only after execution of sale deed i.e. on construction agreements.

N. The status of SCN's as referred above is as follows:

Period	SCN	Amount	Status
2009	HQPQR No. 34/2010 Adjn (ST)(ADC) dated 12.04.2010	Rs.6,04,187/-	Final Order No. A/30172-30178/2019
2010	OR No.59/2011-Adjn (ST) Gr. X,dated 23.04.2011	Rs.12,06,447/-	CESTAT Final Order No.A/30575/ 2019 dated 03.10.2019
2011	OR No. 53/2012 Adjn (ADC) dated 24.04.2012	Rs.27,61,048/-	
Jan 12 to Jun 12	OR No. 81/2013-Adjn. (ST)(ADC) dated 02.12.2013	Rs. 11,87,407/-	Settled under Sabka Vishwas Scheme
July 2012 to March 2014	OR No.109/2014 Adjn (ST) (JC) dated 24.09.2014	Rs. 38,35,321/-	
April 2014 to March 2015	OR No. 25/2016-Adjn (ST) (JC) dated 18.04.2016	Rs. 6,30,349/-	

O. Now the present SCN was also issued with similar error of quantifying the proposed demand of service tax in as much treating the sale deed values & other taxes as taxable value of services (annexure to SCN) while alleging that service rendered after execution of sale deed alone liable for service tax (Para 2 of SCN).

P. The SCN was issued on 16.04.2018 proposing an amount of Rs. 42,07,65/- and applicable interests with the penalty under sections 75,76 and 77 of the Finance Act 1994. In this regard, the Appellant has replied to the SCN on 14.06.2018.

Q. Subsequently, Appellant has attended the personal hearing and submitted the documents such as party-wise ledgers for the period April 2015 to June 2017, copy of sale deeds and copy of completion certificates.

R. Subsequently. Appellant has received the Order in Original No. 09/2021-22 dated 23.12.2021 confirming the following demands

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a) I confirm the demand of an amount of Rs. 42,07,651/- (Rupees Forty-Two Lakhs Seven Thousand Six hundred and Fifty-One only) including Cesses) being service tax payable on the taxable services rendered by them during the period from April, 2015 to June, 2017, in terms of sub-section (2) of Section 73 of the Finance Act, 1994; against M/s. Modi & Modi Constructions; on the grounds discussed supra

b) In terms of Section 75 of the Finance Act, 1994, I order M/s. Modi & Modi Constructions to pay interest at appropriate rates, on the amount mentioned at (a) above; Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for the contravention of Rules and Provisions of the Finance Act, 1994 and

c) I impose a penalty of Rs.4,20,765/- (Rupees Four Lakhs Twenty Thousand Seven Hundred and Sixty Five only) (being 10% of the ST payable) on M/s. Modi & Modi Constructions, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax; and

d) I impose a Penalty of Rs.10,000/- (Rupees Ten Thousand Only) on M/s. Modi & Modi Constructions under Section 77 of the Finance Act, 1994 for failure to declare the right taxable incomes in their ST-3 return.

Aggrieved by the impugned order, which is contrary to facts, law and evidence, apart from being contrary to catena of judicial decisions and beset with grave and incurable legal infirmities, the Appellant prefers this appeal on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.

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GROUNDS OF APPEAL

1. Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.

2. Appellant submits that the present proceedings and the issuance of the impugned SCN and Order-in-original were without authority of the law as the provisions of the Finance Act, 1994 which authorizes the levy and collection of Service tax were repealed in terms of Section 19 of Constitution (one hundred and first amendment) Act, 2016 read with Section 173 of CGST Act, 2017. Further, Section 174 of CGST Act, 2017 as amended only saves the proceedings already instituted before the enactment of the CGST Act, 2017 (w.e.f. 01.07.2017) whereas the issuance of the impugned SCN and Order was initiated after 01.07.2017. Therefore, the present proceedings do not sustain. The reference of Section 174(2) of CGST Act, 2017 by the impugned order do not help as it only saves the proceedings already initiated as on 01.07.2017 and not the fresh proceedings initiated after 01.07.2017.

In Re: Impugned order is not valid

Impugned order beyond SCN

3. Appellant submits that the impugned SCN has clearly stated that the services rendered after execution of sale deed against agreement of constructions are taxable and it has never proposed to demand service tax on sale deed values. An extract of the same has been provided for your ready reference:

*"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 ii) 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 assessees to their customers under agreement of construction is classifiable under " Works Contract Service" under Section 65 (105) (zzzza) under Service tax as there exists service provider and receiver relationship between them. As there is 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 are taxable services under "Works Contract Service".***

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4. Further, Appellant would like to draw our attention towards the Para 4 of the Show Cause Notice which reads as follows

"As per the information furnished by the assessee vide letter dated 15.02.2018 along with statements, it is seen that "the assessee" have rendered taxable services under the category of "Works Contract Services" during the period April, 2015 to June, 2017. The assessee had rendered services for a taxable value of Rs.750,49,757/-. After deduction of VAT of Rs.40,12,405/- the taxable value works out to Rs. 7,10,37,352/- on which service tax (including Education and S & H.E cess) works out to be Rs.42,07,651/- for services rendered during the said period, as detailed in the annexure enclosed to this notice.

5. On conjoint reading of both the paragraphs, it is clear that on one hand the impugned Show Cause Notice is stating that the Appellant is liable only the construction services rendered by the Appellant post execution of sale deed and on other hand while quantifying the taxable value, it has considered the entire receipts. To be on point, it has not even stated the basis of such value as to where it has derived. The notice has merely mentioned that the values submitted by the appellant which include both value towards sale deed and construction services were considered. Since, the notice is self-contradictory and erroneous, the SCN shall not sustain and the impugned order based on such SCN is not valid.

6. Appellant submits that the impugned order needs to be set aside for more than 1 more as follows:

   a. The SCN itself is erroneous, the order based on such SCN shall not sustain and needs to be set aside.

   b. The findings of the impugned order is not in line with the allegations of the SCN and are beyond the scope of SCN.

   c. The SCN has clearly stated that the value of the sale deed is not subjected to the service tax. However, the impugned order has given a finding on the valuation and confirmed the demands on the same.

Therefore, the impugned order has clearly travelled beyond the SCN and hence is not valid to that extent. Relied on Commissioner v. Shital International — 2010 (259) E.L.T. 165 (S.C.) wherein it was held that *"it is trite law that unless*

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the foundation of the case is laid in the show cause notice, the revenue cannot be permitted to build up a new case against the assessee.".

7. Appellant further submits that likewise the impugned SCN, the impugned order is also self-contradictory. On one hand, it is stating that there are two agreements out of one is with respect to the sale of land which is totally out of purview of service tax and on other hand, it is stating that entire value of contract including the value towards the sale of undivided portion of land are liable to service tax.

"16.8 The undisputed facts of the case are that the noticee had entered in to two agreements with such prospective buyers - one whereby they agreed to transfer undivided share of land relating to the houses to be constructed on works contract basis and the second, whereby they agreed to undertake construction of houses and transfer them to buyers on terms specified which included payment of sums due at different stages of construction of the houses/villas. The total consideration is received in to two parts- one representing the value of undivided share of land and the other the taxable value of construction services provided. The assessee seemed to have determined the taxable value of the works contract services provided to be 40% of the value of such services earmarked (after excluding land value) and claimed it to be in accordance with Rule 2(A) (ii) of the Service tax (Determination of Value) Rules, 2006 and paid service tax accordingly. The allegation in the notice is that they had short-paid service tax in contravention of Rule 2(A) (ii) of the Service Tax (Determination of Value) Rules, 2006 since the noticee did not include the value of the land as part of the total amount charged for the works contract while arriving at the taxable value."

8. Appellant submits that the SCN has never disputed the valuation adopted by the Appellant, however, the impugned order itself has stated that contract value includes the value towards the sale of undivided portion of land. This clearly shows that the impugned order has travelled beyond the SCN to confirm the demand.

9. Appellant submits that the adjudicating authority has not at all made an attempt to understand the transaction undertaken by the Appellant and the scope of different agreements entered with the customer. Without verifying the scope of the agreements, the impugned order has simply confirmed the

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demand by extracting various definitions of Finance Act, 1994 and without giving any reasons why the amounts received by the Appellant is taxable. This shows that impugned order is not reasoned order and hence not valid and requires to be set aside. In this regard Appellant wish to rely on

a. Sant Lal Gupta v. Modern Coop.G.H.Society Ltd. — 2010 (262) E.L.T. 6 (S.C.) wherein it was held that *"The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."*
b. *AC of CTDVs. Shukla and Brothers*, 2011 (22) S.T.R. 105 (S.C.)
c. *State of Orissa v. DhaniramLuhar* - (2004) 5 SCC 568;

In Re: Flats sold after receipt of Completion Certificate are not leviable to service tax

10. Appellant submits that as stated in background facts, 'Completion certificate' from the Chartered Engineer was obtained on 05.05.2013 for the 33 villas and applied for occupancy certificate on 05.11.2014 and 20 villas were booked after this date and sale deed is being executed for the entire sale value of villas. In such circumstances, no service tax is liable on the amounts received towards said villas since same is 'sale of immovable property' and it was specifically provided in Section 66E(b) of Finance Act, 1994 that service tax is not liable for the villas booked after completion certificate date (Statement showing amounts received towards flats booked after Completion Certificate but with construction agreement is enclosed as Annexure VIII)

11. In this regard, Appellant submits that the impugned order vide Para 29 has stated that *"29 As per the Provisions of Telangana Building Rules 20 12, "Upon completion of the construction, the builder or the developer of the building has to apply for the Completion Certificate to the municipal authority" If the building is constructed as per the building approval plan and if it meets other building standards, the concerned authority will issue completion certificate. As per the law the "competent authority" means the Government authority and it is mandatary to obtain such certificate from the Municipal authorities. The*

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completion certificates submitted by the assessee are issued by Chartered Engineer / Registered Valuer and not by the Competent authority of the government as sPecified and as such the completion certificates obtained from the Chartered Engineer/ registered valuer/architect by the assessee are not valid and proper documents for this purpose and thus, they are liable for rejection"

12. In this regard, Appellant submits that the finding of the impugned order that as per the provisions of Telangana Building Rules, 2012, the builder or developer has to apply for the completion certificate to the municipal authority is not correct in as much as there is no such requirement under those rules. Appellant submits that the above referred rules only prescribes that the builder or developer has to obtain "Occupancy Certificate" and not the "Completion certificate". Hence, the confirmation of demand on such ground is not correct and the same needs to be dropped.

13. Appellant submits that the receipt of 'occupancy certificate' is not relevant for determining the service tax liability and it is only receipt of 'completion certificate' that is relevant to determine the service tax liability under section 66E(b), *ibid* which reads as under:

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of ***completion certificate*** *by the competent authority.*

Explanation.—For the purposes of this clause,—

(I) the expression "competent authority" means the Government or any authority authorised to issue ***completion certificate*** *under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—*

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure.

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14. From the above referred section, it is very clear that if the entire consideration is received after issuance of **'Completion Certificate'** by the competent authority, the same is excluded from the purview of Section 66E(b) of Finance Act, 1994. However, the said section has not referred 'Occupancy Certificate' anywhere.

15. Further, explanation - I clarifies that the **"competent authority"** means the Government or any authority who is authorized to issue **completion certificate** under any law for the time being in force and in case of non-requirement of such certificate from competent authority the same can be obtained from specified persons under Finance Act 1994. In the instant case, completion certificate has been obtained from the chartered engineer who is authorized to issue the same.

16. Appellant would like to submit that the completion and occupancy certificate are two different things and cannot be interchanged. Completion Certificate is the certificate which certifies that the building is completed as per the approved plan and meets other requirements such as distance from road, height of the building etc.

17. However, the Occupancy Certificate is the certificate which certifies that the building has been complied with all the required building standards, local laws and is safe to occupy. Occupancy certificate will be issued by municipal authorities that provide no objection to occupy the building for its specified use. The Occupancy Certificate will be issued only once the building has been completed in all respects and can be occupied.

18. This shows that the completion certificate precedes the occupancy certificate, and both are completely different. Further, Section 66E(b) refers the completion certificate but not the occupancy certificate. In state of Telangana, there is no requirement to obtain completion certificate from any authority and there is only requirement to obtain Occupancy Certificate from GHMC. Since there is no requirement to obtain completion certificate from the government or any authority, Appellant have obtained the same from a Chartered Engineer who is a professional capable of issuing such certificate. Hence, the confirmation of demand by the impugned order is not correct and the same needs to be dropped.

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No Service tax on sale of semi-finished flat

19. Appellant submits from the findings of the impugned order; it is clear that the adjudicating authority itself has admitted that there are two agreements out of which one is taxable and the other being not liable to service tax involving the transfer of immovable property. However, the impugned order while confirming the demand has considered the same.

20. In this regard, Appellant submits that the sale of semi-finished flat is ***transfer of immovable property which is not leviable to service tax.*** In the present case, the agreement of sale deed is entered for sale/register of semi-finished flat which is an immovable property. Accordingly, the amount received for sale of semi-finished flat is not liable to service tax. On the basis of same, Appellant submits that the confirmation of demand by the impugned order is not sustainable and requires to be set aside.

21. Appellant further submits that there is no service tax levy on sale of semi-finished flat as the same was excluded from the definition of 'service' u/s. Section 65B(44) of Finance Act, 1994 ("Transfer of title in goods or immovable property, by way of sale").

22. Appellant submits that the impugned order vide Para 16.6 and vide Para 23 stated that

16.6 In the instant case the assessees are paying VAT, hence there appears to be a transfer of property involved in the execution of work. Further the contract was for the purpose of construction of complex, which is a declared service. So, the work under taken by the assessees appear to satisfy the definition specified at Section 65B (54) of Finance Act, 1994 and the same can be termed as "Works Contract service"

23. The noticee took the argument that they are not liable for pay Service tax on those flats sold after completion certificate as per Section 66E(b) of Finance Act 1994 and that after deduction of the same, they have paid the tax @ 40 % abatement on the remaining amounts received towards agreement for construction with customers. This is undisputedly a transaction involving (execution of works contract and accordingly Section 66 E (h) of Finance Act, 1994 ("service portion in the execution of a works contract") read with Rule

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2A(ii) of the Service Tax (Determination of Value) Rules, 2006 are the relevant legal provisions in this instant case."

23. In this regard, Appellant submits that the finding of the impugned order is not at all correct in as much as the sale of flats after receipt of completion certificate becomes an immovable property and will go out of the purview of works contract definition under Section 65B(54) of Finance Act, 1994. Once the same is not a works contract service, there is no liability to pay service tax on the sale of immovable property. Hence, the finding of the impugned order needs to be set aside.

24. Appellant further submits that value of 'agreement of sale' consists of two parts namely 'undivided portion of land' and 'semi-finished flat. The semi-finished flat represents the construction work already done prior to booking of flat by the prospective buyer. The work undertaken till that time of entering 'AOS' is nothing but work done for self as there is no service provider and receiver. It is settled law that there is no levy of service tax on the self-service and further to be a works contract, there should be a contract and any work done prior to entering of such contracts cannot be bought into the realm of works contract. In this regard reliance is placed on the following:

a. Apex court judgment in Larsen and Toubro Limited v. State of Karnataka — 2014 (303) E.L.T. 3 (S.C.): *"115. It may, however, **be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser**. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government."*

b. **Jurisdictional CESTAT decisions in case of Modi & Modi Construction Vs CCE, Hyderabad -II 2021 (45) GSTL 398 (Tri-Hyd) wherein it was held that "***11. The second question is the nature of the contract on which service tax is proposed to be charged. The SCN itself states that the plots along with semi-finished buildings were sold to the buyers under the sale agreement. Thereafter, a separate agreement was entered into with the individual home owners for completion of the building/structure as per the agreement. In other words, there is no*

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agreement for completion of the entire complex but there are a number of agreements with each individual house owner for completion of their building. In other words, the individual house owner is engaging the appellant for construction of the complex for his personal use as residence. The explanation to Section 65 (91a) categorically states that personal use includes permitting the complex for use as residence by another person on rent or without consideration. Therefore, it does not matter whether the individual buyer uses the flat himself or rents it out. There is nothing on record to establish that the individual buyers do not fall under the aforesaid explanation. For this reason, we find no service tax is chargeable from the appellant on the agreements entered into by them with individual buyers for completion of their buildings as has been alleged in the SCN. Consequently, the demand needs to be set aside and we do so. Accordingly, the demands for interest and imposition of penalties also need to be set aside"

c. CHD Developers Ltd vs State of Haryana and others, 2015 –TIOL-1521-HC – P&H-VAT wherein it was held that *"45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property."*

25. Appellant further submits that to be covered under the definition of works contract, one of the vital conditions is that there should be transfer of property in goods leviable for sales tax/VAT. Undisputedly sale of undivided portion of land along with semi-finished flat is not chargeable to VAT as there is no transfer of property in goods is involved and it is mere sale of immovable property (same was supported by above cited judgments also). Therefore, said sale cannot be considered as works contract and consequently no service tax is liable to be paid. All the goods till the prospective customer becomes owner (i.e. upto entering of 'Agreement of sale') has been self-consumed and not transferred to anybody. Further goods, being used in the construction of semi-finished flat, have lost its identity and

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been converted into immovable property which cannot be considered as goods therefore the liability to pay service under works contract service up till the execution of 'Agreement of sale' would not arise.

26. Appellant submits that once it is concluded that the amount received towards sale deed is not taxable then there is no short payment of service tax, therefore, the impugned order needs to be set aside.

27. Appellant submits that the impugned order vide Para 16.8 has given a finding that *"the allegation in the notice is that they had short-paid service tax in contravention of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006 since the Appellant did not include the value of the land as part of the total amount charged for the works contract while arriving at the taxable value."*

28. In this regard, Appellant submits that the finding of the impugned order is not at all correct in as much as the show cause notice has never disputed the valuation adopted by the Appellant. Therefore, the question of inclusion of sale deed values in the taxable values is not correct and the same needs to be set aside.

29. Appellant further submits that once the sale deed is entered, the right in the semi-finished flat is transferred to the customers and for completion of balance construction, Appellant has been entering into construction agreement on which appropriate service tax has been already paid. In this regard, Appellant submits that the agreement entered with customer involves only transfer of property in goods along with services and does not involve transfer of land as the same was already transferred to the customer by entering into sale deed. Once the transaction does not include land, there is no requirement to include the value of land while calculating the service tax. Hence, the finding of the impugned order that the value of land shall be included for the purpose of valuation is not correct and the same needs to be set aside.

In Re: Other non-taxable receipts (Corpus fund, Electricity deposit, water charges, service tax etc.,) are not liable – hence shall not be included in 'taxable value'

30. Appellant further submits that the adjudicating authority while confirming the demand vide Para 32 stated as follows

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"32. I find that the assessee has referred to "nontaxable receipts" in his worksheet which he claims has to be deducted while determining the taxable value. In his submissions, he contends that VAT, registration charges, Stamp duty, electricity charges are to be deducted. I find that the notice itself has not taken VAT and registration charges for purpose of quantification of taxable value. Therefore, it is not a bone of contention between the Department and the assessee. As regards other "non taxable receipts" as claimed by the Appellant, he has not provided any documents except the worksheet. Without any other material facts on record, I am not in a position to examine the nature of the supposed non taxable receipts. The onus is on the Appellant to provide supporting documents to substantiate his contention that these are not to be taken into consideration for determining the taxable value. They have failed to do so. Here, I must point out that under Rule 2A(ii), total amount charged for the work contract is to be taken for abatement and "total amount" has been defined under the said rules as "sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of work contract, whether or not supplied under the same contract or any other contract after deducting

i) the amount charged for such goods or services, if any

ii) the value added tax or sales tax, if any levied thereon"

31. Appellant submits that the finding of the impugned order that the Appellant has not submitted any documents is not at all correct in as much as the adjudicating authority has not asked for such documents. If the documents are not available, the department has the liberty to request the documents instead of confirming the demand. In the instant case, no such request is made by the adjudicating authority. It is settled law that the department cannot confirm the demand by merely stating that the documents are not submitted. Hence, the impugned order to that extent needs to be set aside.

32. Appellant submits that the amounts classified as non-taxable receipts includes electricity charges, corpus fund etc. Appellant submits that these receipts towards

a. Corpus fund which is collected & totally kept in separate bank account and transferred to society/association once it is formed; collection of

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