



केन्द्रीय सीमा शुल्क एवं केन्द्रीय कर आयुक्त का कार्यालय (अपील्स-II)
सातवातल, जी. एस. टी. भवन, एल. बी. स्टेडियमरोड, बशीरबाग, हैदराबाद, पिन - ५००००४
OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX
APPEALS-II HYDERABAD COMMISSIONERATE
7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, PIN-500004, Telangana
State.

Ph: 040-23234219/ e-Mail: cgst.hydappeals2@gov.in

अपील्स Appeal Nos. 412/2024 (SC) GST and 361/2024 (SC) DGST
Order-in-Original No.78/2024-25-SEC-ADJN-JC(GST) dated 29/06/2024
DIN: 20250456DN00000528E9

अपील आदेश ORDER - IN - APPEAL No. HYD-GST-SC-AP2-02 & 03-2025-26

तारीख Dated 15th April, 2025

जारीकर्ता : श्री. मनोज कुमार राजक, आयुक्त, सीमा शुल्क व केन्द्रीय कर (अपील्स-II)
Passed by: Shri Manoj Kumar Rajak, Commissioner of Customs & Central Tax
(Appeals-II)

उद्देशिका / P R E A M B L E

1	जिस व्यक्ति को यह प्रति जारी की जाती है, उस व्यक्ति के निजी उपयोग के लिए निशुल्क दी जाती है। This copy is granted free of cost for the private use of the person to whom it is issued.
2.	इस आदेश से व्यक्तित्व कोई भी व्यक्ति वस्तु एवं सेवा कर नियम, 2017 के नियम 110 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (1) के तहत इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित उगुक्त अपीलार्थि न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'अपूर्ति' की जगह 'विवाद-प्रस्त विषयों' में से एक न हो, अपील दायर कर सकता है। जहां 'अपूर्ति' की जगह 'विवादित मामलों' में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे अपीलकर्ता को संप्रति करने की तिथि से 3 (तीन) माह के अंदर अपील जीएसटी एपीएल-05 फॉर्म में दायर की जानी चाहिए। आदेश की एक प्रमाणित प्रति, यदि लागू हो तो नियम 110 (5) के अंतर्गत विहित शुल्क तथा अन्य संगत दस्तावेज संलग्न करते हुए, अपील पर नियम 26 के तहत विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं। Any person aggrieved by this order, may under Section 112(1) of the Central Goods and Services Tax (CGST) Act 2017, read with Rule 110 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the appropriate State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-05 within 3(three) months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. The appeal shall be signed in the manner specified under Rule 26, enclosing a certified copy of the order, the prescribed fee under Rule 110(5) if applicable, and any other relevant documents.
3.	वस्तु एवं सेवा कर नियम, 2017 के नियम 111 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (3) के तहत आयुक्त द्वारा प्राधिकृत अधिकारी इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित अपीलार्थि न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'अपूर्ति' की जगह 'विवाद-प्रस्त विषयों' में से एक न हो, अपील दायर कर सकता है। जहां 'अपूर्ति' की जगह 'विवादित मामलों' में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे जारी करने की तिथि से 6 (छः) माह के अंदर अपील जीएसटी एपीएल-07 फॉर्म में दायर की जानी चाहिए। अपील के साथ आदेश की प्रमाणित प्रति एवं अन्य संगत दस्तावेज संलग्न हों। विभागीय अपील के प्रत्याक्षेप, वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (5) के साथ पठित नियम 110 (2) के अनुसार जीएसटी एपीएल-06 फॉर्म में इस्कैसप्रेशन के 45 दिनों के अंदर दायर किए जाएं और इस पर नियम 26 में विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं। The officer authorized by the Commissioner under Sec 112(3) of the CGST Act 2017, read with Rule 111 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-07 within 6 (six) months of the date of issuance of the disputed order. The appeal shall enclose a certified copy of the order, and any other relevant documents. The cross objections to the departmental appeal shall be filed within 45 days of communicating it, in Form GST APL-06 in terms of Rule 110(2) read with Sec 112(5) of the CGST Act 2017 and signed in the manner specified in Rule 26.

	रेवेन्यू बार एसोसिएशन के मामले में मद्रास उच्च न्यायालय के आदेश के मद्देनजर अपीलार्थ न्यायाधिकरण का गठन नहीं किया गया है। v. भारत संघ और इसलिए अपील उस तारीख से तीन महीने के भीतर दायर नहीं की जा सकती जिस दिन आदेश के खिलाफ अपील की मांग की गई है। अधिनियम के उपरोक्त प्रावधान को प्रभावी करने में उत्पन्न होने वाली कठिनाई को दूर करने के लिए, सरकार ने परिषद की सिफारिशों पर, केंद्रीय माल और सेवा कर (कठिनाईओं का नौवां निवारण) आदेश, 2019 दिनांक 03.12.2019 जारी किया है। उक्त आदेश के माध्यम से यह प्रावधान किया गया है कि ट्रिब्यूनल में अपील आदेश के संचार की तारीख या जिस तारीख को राष्ट्रपति या राज्य अध्यक्ष, के रूप में तीन महीने (सरकार द्वारा अपील के मामले में छह महीने) के भीतर की जा सकती है। अपीलीय न्यायाधिकरण के कार्यालय में प्रवेश करने की स्थिति में, जो भी बाद में हो।
	(ii) The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
4.	धारा 112 (8) के अनुसार, धारा 112 (1) के तहत तब तक कोई अपीलदायता नहीं की जाएगी जब तक अपीलकर्ता (ए) आदेशित आदेश से उत्पन्न कर, ब्याज, फाइन, शुल्क व जुर्माने के उस अंश का, जो उनके द्वारा स्वीकार किया गया है तथा (बी) उक्त आदेश, जिसके संबंध में अपील दायर की गई है, से उत्पन्न धारा 107(6) के अंतर्गत प्रदत्त राशि के अतिरिक्त, विवादित कर की शेष राशि के 20% का पूर्ण भुगतान नहीं किया हो।
	In terms of Sec 112(8), no appeal shall be filed under Sec 112(1) unless the Taxpayer appellant has paid (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under Sec 107(6), arising from the said order, in relation to which the appeal has been filed.
5. (i)	धारा 112 (1) के तहत आवेदन पत्र के साथ रूपए 5 मूल्य (केवल पांच रुपये) का गैर न्यायिक न्यायालय शुल्क टिकट हो। नियम 110 (5) के साथ पठित धारा 112 (10) के अनुसार अपीलीय प्राधिकरण के समक्ष अपील / अपील प्रत्यावर्तन हेतु प्रस्तुत आवेदन के साथ अधिकतम रु. पच्चीस हजार रुपये के अग्रधीन कर / इनपुट टैक्स क्रेडिट के प्रति एक लाख रूपए के लिए रु. एक हजार का शुल्क या कर या इनपुट टैक्स क्रेडिट में अंतर या जिस आदेश के विरुद्ध अपील की जा रही है उसमें निर्धारित फाइन, शुल्क या जुर्माना लगाया जाए।
	The application under Sec 112(1) shall bear a non-judicial court fee stamp of value Rs.5 (Rupees Five only). In terms of Sec 112(10) read with Rule 110(5), an application for appeal / restoration of appeal before the Appellate Tribunal shall be accompanied by a fee of One thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees
5. (ii)	उपरोक्त धारा 112 की उप धारा (5) में संदर्भित कुल प्रत्याक्षों के ज्ञापन के संबंध में कोई शुल्क देय नहीं होगा।
	No fee is payable in respect of the Memorandum of Cross Objections referred to in sub-sec (5) of Sec 112 ibid.
5. (iii)	धारा 112(3) के अंतर्गत आयुक्त द्वारा अधिकृत अधिकारी द्वारा दायर किए जाने वाले आवेदन के मामले में कोई शुल्क देय नहीं होगा।
	No fee is payable in case of an application filed by the officer authorized by the Commissioner to file an appeal under Sec 112(3).
6.	केन्द्रीय वस्तु एवं सेवा कर अधिनियम, 2017 में निहित उक्त एवं अन्य संबंधित मामलों को नियंत्रित करने वाले प्रावधानों और इसके तहत बनाए गए नियम / जारी की गई अधिसूचनाओं की ओर ध्यान आकर्षित किया जाता है।
	Attention is invited to the provisions governing these and other related matters, contained in the Central Goods & Services Act, 2017 and the rules made / notifications issued thereunder, for compliance.

Taxpayer appellant	M/s. Silver Oak Villas LLP, 2 nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad - 500003 (GSTN:36ADBFS3288A2Z7)
Department appellant	The Assistant Commissioner of Central Tax, Secunderabad GST Division, 2 nd Floor, Salike Senate, Ramgopalpet, M G Road, Secunderabad - 500003
Adjudicating Authority	The Joint Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad

M/s. Silver Oak Villas LLP, 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad – 500003 (GSTN:36ADBFS3288A2Z7) (here-in-after referred to as “taxpayer appellant”) and the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad CGST Commissionerate, Hyderabad (here-in-after referred to as “Department appellant”), have filed appeals against the Order-in-Original No. 78/2024-25-SEC-ADJN-JC(GST) dated 29/06/2024 (here-in-after referred to as ‘Impugned Order’), passed by the Joint Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad (here-in-after referred to as the “Adjudicating Authority”).

BRIEF FACT OF THE CASE: -

2. Basing on the verification of the records by the departmental audit officers, a Show Cause Notice was issued demanding:
 - i) An amount of Rs.22,11,128/- being short paid GST by adopting wrong rate of tax of 12% instead of 18% for providing construction of residential complex service;
 - ii) An amount of Rs.2,22,792/- towards GST short paid under RCM for the services received from unregistered persons during the period from 01.07.2017 to 12.10.2017;
 - iii) An amount of Rs.911/- towards Interest on delayed payment of GST;
 - iv) An amount of Rs.2,13,74,199/- towards GST short paid being difference in GSTR-9/9C and GSTR 3B;
 - v) An amount of Rs.68,600/- towards Interest payable on irregularly availed ITC;
 - vi) An amount of Rs.18,73,254/- towards irregularly availed ITC being difference in GSTR 2A and 3B difference.
3. The adjudicating authority after following due procedure passed the impugned order duly:
 - i) Confirming the demand of Rs.22,11,128/- (CGST-11,05,564, SGST-11,05,564) along with Interest under Section 50 and Penalty under Section 74(9) of the CGST Act, 2017.
 - ii) Confirming the demand of Rs.2,22,792/- (CGST-1,11,396, SGST-1,11,396) along with Interest under Section 50 and Penalty under Section 74(9) of the CGST Act, 2017.
 - iii) Confirming the demand of Rs.911/- towards Interest under Section 50

of the CGST Act, 2017.

- iv) Confirming the demand of Rs.2,13,74,199/- (CGST-1,06,87,100, SGST-1,06,87,099) along with Interest under Section 50 and Penalty under Section 74(9) of the CGST Act, 2017.
- v) Dropping the demand of Interest of Rs.68,600/-
- vi) Confirming the demand of Rs.18,73,254/- (CGST-9,36,627, SGST-9,36,627) along with Interest under Section 50 and Penalty under Section 74(9) of the CGST Act, 2017.

GROUND OF APPEAL: -

4. Aggrieved with the above mentioned OIO, the tax-payer appellant filed the appeal on the following grounds:

4.1 That the Adjudicating Authority has erred in confirming the demand of Rs 22,11,128/- under section 74(9) on account of "Short payment of GST on construction services during the period 2017-18, 2018-19" by not considering the documentary evidences provided by the Taxpayer appellant during Adjudication proceedings in support of discharging their tax liability.

4.2 That the Adjudicating Authority has erred in demanding tax of Rs.22,11,128/- in para 1 on the account of "Short payment of GST on Construction Service during 2017-18, 2018-19" in addition to Rs. 2,13,74,200/- demanded under para 4 towards "Short payment of GST as per turnover declared in GSTR 9/9c for the financial year 2017-18 and 2018-19" where the entire turnover considered for levying tax includes the turnover in para 1, resulting in demanding tax on same turnover twice and unjust enrichment.

4.3 That with reference to Non-Payment of RCM on Brokerage/Commission paid to unregistered persons under Section 9(4) of the CGST Act, 2017. That the Adjudicating Authority had erred in so far as passing a non-speaking order by not recording the reasons for which the contentions made by the Taxpayer appellant during the adjudication proceedings were not acceptable.

4.4 That with respect to demand of Interest on Delayed payment of GST (Cash portion) due to delay in filing of GSTR3B return for the month of August, 2017, that they have already paid the Interest amounting to Rs.911/-. That the Adjudicating Authority has erred in so far as imposing a penalty of

Rs.25,000/- under section 125 of the CGST Act,2017 for late filing of GSTR 3B returns is in contravention of Article 20(2) of the Constitution of India. That the Adjudicating Authority has erred in so far as imposing the maximum amount of penalty prescribed of ₹25,000 for a minor interest amount of Rs.911/- which is highly unjust and unreasonable.

4.5 That the Adjudicating Authority has erred in confirming a demand of Rs.2,13,74,200/- under section 74(9) in so far as passing a non-speaking order and not recording the reasons for which the contentions made by the Taxpayer appellant during the adjudication proceedings were not acceptable. That the Adjudicating Authority has erred in confirming a demand of Rs. 2,13,74,200/- under section 74(9) in so far as not considering the documentary evidences provided by the Taxpayer appellant during Adjudication proceedings in support of discharging their tax liability.

4.6 That the Adjudicating Authority has erred in confirming a demand of Rs.2,13,74,200/- under section 74(9) in so far as not taking into consideration a vital fact that the financials were prepared in accordance with percentage of completion method (POCM) as mandated by AS - 7 on Construction Contracts which resulted in timing differences between reporting of turnovers in financials and GST returns. Further, that the Adjudicating Authority has erred in looking at the periods FY 2017-18 and FY 2018-19 in isolation and in not taking a wholistic view for the project across its life time.

4.7 That the Adjudicating Authority has erred in confirming a demand of Rs. 2,13,74,200/- under section 74(9) in so far as not following a consistent approach in adopting turnovers for calculation of tax liabilities for FY 2017-18 and FY 2018-19 thereby resulting in bringing to tax fictional turnovers and unjust enrichment.

4.8 That the Adjudicating Authority has erred in confirming a demand of Rs. 2,13,74,200/- under section 74(9) in so far as not deducting from the total turnover as per financials the value of exempted turnovers such as interest on unsecured loans and interest on fixed deposits from the total turnover thereby resulting in determination of tax on exempted supplies which is in contravention of the provisions of the GST law.

4.9 That the Adjudicating Authority has erred in confirming a demand of Rs

2,13,74,200/- under section 74(9) in so far as ignoring the actual transaction values for sale of land and agreement for construction and in applying the valuation mechanism contained in Notification No 11/2017 (CT) Rate dated 28.06.2017 and adopting 1\3rd value to be the deemed land value though the said notification and valuation mechanism has been held to be unconstitutional and liable to be read down by the Honourable Gujarat High Court in the case of Munjaal Manishbhai Bhatt Vs UOI 2022 - TIOL-663-HC-AHM-GST.

That in view of their above submissions, they have requested to allow the appeal.

5. Department while reviewing the said Order had found that the impugned order is not proper and legal and field this instant appeal on the following grounds:

5.1 That a plain reading of the provisions of Section 125 of the TGST Act, 2017, it appears that the adjudicating authority should have imposed penalty under Section 125 of TGST Act. 2017 also since there was delay in payment of SGST (in cash) also by the tax payer and the demand of interest of Rs.911/- (CGST&SGST) was confirmed by the adjudicating authority vide the impugned OIO. It appears that non-imposition of penalty under Section 125 of TGST Act, 2017 does not appear to be legal and proper since there was violation of provisions of TGST Act, 2017 also.

PERSONAL HEARING: -

5. Shri. Pranay Mehta, Chartered Accountant, Shri. Nishanth Rao, Advocate, have attended the personal hearing held on 13.02.2025 and reiterated the submissions made in the grounds of appeal. They also referred the Hon'ble High Court of Madras decision in case of M/s. Avigna Properties (P) Ltd., vs. State Tax Officer with reference to deemed value of land. In view of the same, they requested to set aside the impugned order.

DISCUSSION AND FINDINGS: -

6. I have gone through the facts of the case, the statement of facts & grounds of appeal submitted by both taxpayer appellant and department appellant, along with the submissions made by the authorised representative of the taxpayer appellant during the personal hearing. The taxpayer appellant has filed this appeal with a delay of 30 days. They have filed an application for condonation of delay. The delay is condoned as the grounds mentioned for the

delay appear to be genuine. They have paid the appropriate pre-deposit. Since both the tax-payer's appeal and department appeal are filed against one impugned order, I take up both the appeals and proceed to decide together.

7. First, I take up the appeal filed by the taxpayer appellant. I have gone through the submissions made by the Taxpayer appellant in their appeal memorandum and submissions made at the time of personal hearing.

8. The Taxpayer appellant is engaged in the business of construction and development of residential villas. The Taxpayer appellant has undertaken development of residential villas in two phases viz. Silver Oak Villas Phase 1 & 2 over the period 2017-18 to 2021-22, wherein 95 Villas were constructed and sold to their independent customers. It is observed from the records, that a sale deed is executed first on the independent customer and an agreement is made later, specifying the consideration towards the construction service.

9. Though the impugned order covers the period 2017-18 and 2018-19, a wholistic verification covering the entire duration of the project needs to be undertaken for arriving at a holistic picture. It is observed that the Taxpayer appellant is following the accounting standards AS-7 on Construction Contracts for the purpose of Income Tax Act, 1961. As per these accounting standards, the revenue in financials is determined based on Percentage of Completion Method (POCM). Whereas, GST liability needs to be discharged on actual receipts basis. In view of this, turnover as per the balance sheet will vary when compared to the turnover declared in GST Returns. For verifying this aspect too, necessary examination has to be conducted for the entire period of project. The Taxpayer appellant has submitted a CA Certificate wherein the total sale consideration from sale of 95 Villas was quantified as Rs.42,93,27,500/- as per the AS-7 on "Construction Contract" over a period of 5 years i.e., starting from FY 2017-18 to 2021-22.

10. I take up the first issue of short payment of tax during the years 2017-18 and 2018-19. A demand of Rs.22,11,128/- was confirmed in the impugned order alleging that GST is discharged at 12% whereas GST on the construction services is levied at 18%. The Taxpayer appellant is contending that they have erroneously reported the value of land in taxable value to an extent of Rs.1,22,84,042/- during the relevant period. It is seen that the Taxpayer appellant has amended the GSTR 1s for the relevant months in January 2019. Further, annual GSTR 9 and GSTR 9C for the years 2017-18 & 2018-19 were

filed with rectified figures. Hence, this demand is not sustainable.

11. The second issue to be decided is whether the Taxpayer appellant is liable to pay GST amounting to Rs.2,22,792/- under RCM for the taxable services received from unregistered persons during the period from 01.07.2017 to 12.10.2017. The Taxpayer appellant is claiming that they have obtained GST Registration on 09.08.2017 and majority of the services were received prior to GST Registration and hence the demand needs to be reassessed. However, the Taxpayer appellant did not submit relevant invoices/vouchers, etc. issued by the service providers to prove that the said services were received by them prior to the date of their GST Registration. Hence, the demand on this count sustains.

12. Now, coming to the third issue of imposition of Penalty (CGST) of Rs.25,000/- under Section 125 of the CGST Act, 2017 for delayed filing of GSTR 3B Return for the month of August, 2017. The Taxpayer appellant has paid the applicable interest amounting to Rs.911/- vide debit entry no. DC3611240058297, dated 18.11.2024. As the delay occurred in the second month of implementation of GST, it will be too harsh to impose a penalty of Rs.25,000/- under Section 125 of the CGST Act, 2017. Accordingly, a penalty of Rs.2,000/- (CGST-1000+SGST-1000) under Section 125 of the CGST/TSGST Act, 2017, would be sufficient to be imposed.

13. I take up the fourth issue of demand of short paid GST amounting to Rs.2,13,74,200/-, as per the turnover declared in GSTR9/9C for the FY 2017-18 & 2018-19. There are two vital factors that need to be addressed to resolve this issue. First being, computation of taxable value as provided under Notification No.11/2017(CT)Rate, dated 28.06.2017, i.e., deemed deduction of 1/3rd value towards cost of land, from the total value. The department has taken this stand. Whereas, the Taxpayer appellant states that in the present Project, two separate agreements, namely Sale Deed for the sale of land & Agreement for Construction for the construction provided, are available. The Taxpayer appellant submitted that the deemed deduction of 1/3rd land value is not correct when the actual land value is available. The sale consideration towards value of land being covered under Entry 5 to Schedule-III of the CGST Act, 2017 is not liable to GST and is therefore excluded while arriving at the GST liability. The Taxpayer appellant has also submitted a case law.

[2023] 151 taxmann.com 422 (Madras)HIGH COURT OF MADRAS Avigna

Properties (P.) Ltd. V. State Tax Officer DR. ANITA SUMANTH, J. W.P. NOS. 6431 & 6434 OF 2023 AND OTHERS WMP. NOS. 7600 OF 2020 AND 2809 OF 2023 AND OTHERS APRIL 24, 2023 Valuation - Construction services - Land value, deduction of - Period 2017 to March, 2019 - By impugned order it was held that Notification No. 11/2017-Central Tax (Rate) does not provide for taking actual land value and it does not permit distinguishing sale of land and supply of construction services and in case of composite construction, 70:30 formula was liable to be adopted - HELD : Impugned construction service from land value - where assessee is unable to bifurcate construction service from land value - Deeming fiction is not applicable where assessee is able to provide actual amount of consideration received towards construction services and land cost - Officer can call for evidence but proceeding on basis of formula as per deeming fiction as only method, is not correct - View taken in impugned order was not correct and order was to be set aside [Section 15 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 9 and 12] [In favour of assessee]*

14. The above judgement of the Hon'ble High Court Madras is strongly in favour of the Taxpayer appellant and as separate sale deed for the land is available in the instant case, it is held that Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 has no relevance to the Taxpayer appellant and GST can be demanded on the value forming the part of Construction Agreement.

15. Now coming to the second vital factor, it is observed that the adjudicating authority has failed to appreciate the accounting practice being followed by the Taxpayer appellant. As stated in the facts of the present case, the financials of the Taxpayer appellant are prepared in accordance with the percentage of completion method (POCM) as mandated by AS - 7 on Construction Contracts. However, the turnover in GST returns is declared based on the provisions contained in section 12(2) and section 13 of the CGST Act, 2017. This has resulted in timing differences between the turnovers reported in financials and the turnover reported in GST returns. Such timing differences have also been duly disclosed as reconciling items in relevant GSTR 9 and 9C returns. A reconciliation of turnovers reported in financials Vs reported in GST returns spanning across FY 2017-18 to FY 2021-22 duly supported by a CA certificate has been submitted as a part of the facts in the present case. The Adjudicating Authority has erred in not considering this vital fact which was fundamental to the nature of the business of the Taxpayer appellant and manner in which transactions were reported. This very fact renders the manner of determination of tax liability, bad-in-law and is liable to be set aside.

16. The Taxpayer appellant has reconciled the actual total consideration received by it from Silver Oak Villas phase 1 and 2 with the amounts reported

by it in Financials Statements and GST returns spanning across FY 2017-18 to FY 2021-22 duly supported by a CA certificate. Therefore, it is factually established that when a holistic approach is adopted considering the nature of business of the Taxpayer appellant and the total lifetime of the project, there is no under reporting of turnover across the total life time of the project.

17. The Adjudicating Authority has erred in considering the higher of the financials turnover and GST returns turnover for the purposes while completely ignoring the timing differences. The year wise revenue recognised for the period 2017-18 to 2021-22 is as below:

Financial Year	Amount in Rs.	Nomenclature in financials
2017-2018	13,38,75,717	Sales
2018-2019	9,91,67,468	Sales
2019-2020	11,35,58,481	Revenue recognized
2020-2021	8,47,25,834	Revenue recognized
2021-2022	-20,00,000	Revenue reversal (Debited to cost)
Total	42,93,27,500	

18. The Taxpayer appellant while filing the GSTR 9C for the year 2018-19 has reconciled and paid differential tax of Rs.45,000/- along with interest of Rs.11,650/- on 05.12.2020, i.e., well before the departmental audit.

Particulars		FY 2017-18	FY 2018-19	Total
Turnover as per Income Tax Act, 1962	A	13,38,80,112	10,07,99,105	23,46,79,217
Difference due to timing difference	B	1,91,38,218	-7,03,98,159	-5,12,59,941
Turnover needs to be reported in GST	C=A-B	11,47,41,894	17,11,97,264	28,59,39,158
Exempted Supplies - It is related to sale of land	D	10,93,12,061	9,17,37,721	20,10,49,782
Taxable Turnover - It is related to construction service	E=C-D	54,29,833	7,94,59,543	8,48,89,376
Rate of Tax to be charged	F	18%	18%	
Actual tax which needs to be discharged	G=E*F	9,77,370	1,43,02,718	1,52,80,088
Amount discharged in GSTR 9C	H	9,77,370	1,42,57,718	1,52,35,088
Difference	I=G-H		45,000	45,000

In view of the above, the demand on this count, does not sustain.

19. Now, I take up the final demand of Rs.18,73,254/- being irregularly availed ITC being GSTR2A-3B difference for the year 2018-19. The issue needs to be verified from the GST Portal. The latest GSTR2A-3B Comparative Statement is downloaded from the Portal:

ITC claimed in GSTR-3B and accrued as per GSTR-2A [As per report no. 4] [GSTR-3B - GSTR-2A] *				
As per GSTR-3B	As per GSTR-2A	Shortfall (-)/ Excess (+) in ITC	Cumulative Shortfall (-)/ Excess (+) in ITC	Cumulative Shortfall (-)/ Excess (+) in ITC as percentage
437,896.00	600,454.04	-162,558.04	-162,558.04	-27.07
561,670.32	514,034.70	47,635.62	-114,922.42	-10.31
470,881.32	670,830.39	-199,949.07	-314,871.49	-17.64
693,107.30	397,230.51	295,876.79	-18,994.70	-0.87
5,099,712.02	236,039.04	4,863,672.98	4,844,678.28	200.31
-2,140,415.00	1,729,921.94	-3,870,336.94	974,341.34	23.49
1,521,727.88	1,019,207.64	502,520.24	1,476,861.58	28.58
995,080.00	860,712.08	134,367.92	1,611,229.50	26.73
1,641,726.94	2,021,874.36	-380,147.42	1,231,082.08	15.29
1,553,877.56	1,062,925.54	470,952.02	1,702,034.10	18.68
1,938,195.74	1,713,174.38	225,021.36	1,927,055.46	17.80
3,025,157.70	4,222,661.88	-1,197,504.18	729,551.28	4.85
15,778,617.78	15,049,066.50	729,551.28	729,551.28	4.85

As seen from the above, ITC to an extent of Rs.7,29,551/- is availed in excess over above the ITC as appearing in GSTR 2A. Hence, the demand to an extent of Rs.11,43,703/- is liable to be set aside.

20. It is observed that this irregularly availed ITC being GSTR2A-3B difference is demanded by invoking the provisions of Section 74 of the CGST Act, 2017. Both the GSTR 2A and 3B returns of the taxpayer are in domain and knowledge of the department. Hence, invoking extended period of limitation on this issue does not sustain.

21. The appeal filed by the department appellant is allowed to an extent of imposition of penalty amounting to Rs.2,000/- (CGST-1000 & SGST-1000) under Section 125 of the CGST/TSGST Act, 2017.

22. In light of the above discussions, I pass the following order:

ORDER

- i) The appeal of the taxpayer appellant is partially allowed as under:
- (a) The demand of Rs.22,11,128/- along with interest and penalty confirmed at Para 21(i) of the impugned order is set aside.
- (b) The demand of Rs.2,22,792/- (Rupees Two Lakhs Twenty Two Thousand Seven Hundred Ninety Two only) confirmed at Para 21(ii) of the impugned order is upheld along with Interest under Section 50 and Penalty of Rs.22,280/- (Rupees Twenty Two Thousand Two Hundred Eighty only) is imposed under Section 73(9) of the CGST/TSGST Act, 2017.
- (c) The Interest amounting to Rs.911/- (Rupees Nine Hundred and Eleven Only) paid by the taxpayer appellant on 18.11.2024 is appropriated.
- (d) The demand of Rs.2,13,74,199/- along with interest and penalty confirmed at Para 21(iv) of the impugned order is set aside.
- (e) The demand of Rs.18,73,254/- confirmed at Para 21(vi) is modified to Rs.7,29,551/- (Rupees Seven Lakhs Twenty Nine Thousand Five Hundred Fifty One only) along with Interest under Section 50 and Penalty of Rs.72,956/- (Rupees Seventy Two Thousand Nine Hundred Fifty Six only) is imposed under Section 73(9) of the CGST/TSGST Act, 2017.
- ii) The appeal of the department appellant is allowed to an extent of imposition of penalty of Rs.2000/- (Rupees Two Thousand only) (CGST-1000+SGST-1000) under Section 125 of the CGST/TSGST Act, 2017.

To

(मनीज कुमार राजक)
(Manoj Kumar Rajak)
आयुक्त/COMMISSIONER

1. M/s. Silver Oak Villas LLP, 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad - 500003

2. The Assistant Commissioner of Central Tax, Secunderabad GST Division, 2nd Floor, Salike Senate, Ramgopalpet, M G Road, Secunderabad - 500003

Copy submitted to the Principal Chief Commissioner of Central Tax & Customs, Hyderabad Zone, GST Bhavan, Basheerbagh, Hyderabad.

1. Copy submitted to the Commissioner of Central Tax and Customs, Secunderabad CGST Commissionerate, GST Bhavan, Basheerbagh, Hyderabad.
2. Office Copy / Master Copy

आयुक्त / COMMISSIONER

Received copy.

28/4/2025



(Pranay Mehta)

