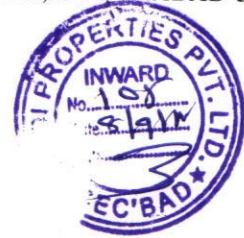


**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
FIRST FLOOR, HMWSSB BUILDING, REAR PORTION, KHAIRATABAD, HYDERABAD-500004
SERVICE TAX APPEAL BRANCH**



Dated: 14/08/2025

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/30291-30292/2025-ST[DB] dated 2025-07-22

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Deputy/Asstt. Registrar (SERVICE TAX Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/30753/2016	Mehta And Modi Homes 5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.g.road, Secunderabad, Telanagana 500003
2	ST/30739/2016	Commissioner of Central Tax-Secunderabad KENDRIYA SHULK BHAVAN, L.B STADIUM ROAD, BASHEERBAG, HYDERABAD TELANGANA 500004
		Name and Address of Respondent
3	ST/30753/2016	Commissioner of Central Tax-Secunderabad KENDRIYA SHULK BHAVAN, L.B STADIUM ROAD, BASHEERBAG, HYDERABAD TELANGANA 500004
4	ST/30739/2016	MEHTA & MODI HOMES 5-4-187/3 & 4, 1ST FLOOR, MG ROAD SECUNDERABAD, HYDERABAD TELANGANA 500003

Other Appellants and Respondents as per Annexure

Copy To**5 Advocate(s) / Consultant(s):**

**Hiregange & Associates Chartered Accountants
(Hyd)
4th Floor, West Block, Srida Anushka Pride,
Road No. 12, Banjara Hills, Hyderabad
Hyderabad,, Telangana, 500034**

06 Additional Party's Name & Address :**7 Office Copy****8 Guard File**

Deputy/Asstt. Registrar (SERVICE TAX Appeal Branch)

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

REGIONAL BENCH - COURT NO. - I

Service Tax Appeal No. 30739 of 2016(Arising out of **Order-in-Original** No.. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)**Commissioner of Central Tax
And Central Excise
Secunderabad - GST**Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana - 500 004.

..

APPELLANT

VERSUS

M/s Mehta And Modi Homes5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad,
Telangana - 500 003.

..

RESPONDENT**AND****Service Tax Appeal No. 30753 of 2016**(Arising out of **Order-in-Original** No.. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)**M/s Mehta And Modi Homes**5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad,
Telangana - 500 003.

..

APPELLANT

VERSUS

**Commissioner of Central Tax
& Central Excise
Secunderabad - GST**Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana - 500 004.

..

RESPONDENT**APPEARANCE:**

Shri Lakshman Kumar K, CA for the Assesse.

Shri K. Sreenivasa Reddy & Shri V R Pavan Kumar, ARs for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)****FINAL ORDER No. A/30291-30292/2025**Date of Hearing: 22.07.2025
Date of Decision: 22.07.2025**[ORDER PER: A.K. JYOTISHI]**

In appeal no. ST/30739/2016, the Department is in appeal against the common Order-in-Original No. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016, whereby the Commissioner has upheld the demand under the category of construction of Residential Complex service during the period 01.01.2011 to 31.12.2011 (SCN dated 10.04.2012) and 01.01.2012 to 30.06.2012 (SCN dated 03.12.2013). The main ground taken by the Department is that while the show cause notice has proposed classification under the Works Contract Service (WCS) falling under 65(105)(zzzza) of Finance Act 1994, while it has been upheld under Construction of Complex Service. Therefore, the Commissioner has clearly gone beyond the classification proposed in the show cause notice by holding said service under a different category of service.

2. Similarly, the appellant M/s Mehta And Modi Homes have also come in appeal against the said order dated 25.04.2016 to the extent the demand has been confirmed by the Commissioner against them under the category of Construction of Residential Complex Service.

3. Learned AR has mainly submitted that the Department is aggrieved because the Commissioner has gone beyond the scope of the show cause notice by holding the said classification under the category of construction of complex service and also confirming the demand there under. He also points out that admittedly this is not in dispute that the service would fall within the category of WCS, as there is a transfer of property in goods in the execution of contract. Therefore, there is a factual error by classifying it under Heading 65(105)(zzzh) as it would only cover construction simplification where material portion is not involved. He has relied on catena of judgments in support that the order passed where the Adjudicating Authority has gone beyond the show cause notice is bad in law.

4. On the other hand, Learned CA is submitting that they have appealed against the said order on two grounds. Firstly, the Commissioner has travelled beyond the scope of the show cause notice by confirming the demand under construction of complex service, in as much as the proposal was under the category of WCS. He is not disputing that this would fall under WCS, but he is pleading that as held by various Co-ordinate Benches, confirmation of demand beyond the scope of show cause notice cannot be sustained. Secondly, he also argues that even if it is falling under WCS, they were engaged in construction of independent houses, as is evident from the two contracts, which were entered by them with the prospective buyers, one for the semi-finished independent villas and another for completion of the said independent villas of each customer. Therefore, even if it is treated as WCS, it would get excluded from the purview of WCS and on that count itself the demand would not sustain against them. He has relied on the judgment of Raghava Estates & Properties Ltd., Vs Commissioner of Central Tax, Guntur and Vice Versa [2024 (8) TMI 1336 (CESTAT-Hyd)] in para 9 held as follows:

9. Learned AR submits that the Adjudicating Authority has confirmed the demand under the category of 'Construction of complex service' while the SCN was issued under the category of 'Works Contract service'. Only because of such an Order, the Revenue has come up on Appeal before the Tribunal. He submits that the Tribunal should take into account that the Appellant himself has been claiming their services to be under the category of 'Works Contract service'. Therefore, the error committed by the Adjudicating Authority should now be rectified and the Tribunal may hold that the correct classification of the services would be under 'Works Contract service'. After this, the matter may be remanded to the Adjudicating Authority for quantifying the demand after considering the fact that Tribunals and Hon'ble High Courts have been consistently holding that no Service Tax is payable under whichever category for such services till 30.06.2010. He makes further written submissions about the abatement allowed by the Adjudicating Authority while confirming the demand.

5. Heard both the sides and perused the records.

6. We find in this issue, the appellants were engaged in construction of residential villas. Department felt that they were liable to pay service tax and therefore two show cause notices were issued dated 10.04.2012 and 03.12.2013 covering the period January 2011 to December 2011 and January 2012 to June 2012 respectively classifying the service under WCS. The Commissioner has gone through the factual matrix and also the submissions made by the party and thereafter held that the said service would be properly classifiable under the category of construction of Residential complex service falling under 65(105)(zzzh) and accordingly confirmed the demand. Therefore, the demand in full has been confirmed. The Department is however, aggrieved because he has not examined the proposed classification nor given any reason about classification being not applicable in the given factual matrix in as much as it is not in dispute that materials were also involved in execution of work involving transfer of property in goods. Therefore, this was a clear case, where the activity would have to fall under WCS during the material time and this aspect is also not disputed by the appellant that this service would properly be falling under WCS itself. It also is apparent that the appellant never claimed that they are not falling under WCS before the Adjudicating Authority.

7. We find that any party, including Department, is entitled to file an appeal against any order whereby he is an aggrieved person and in this case, on the one hand the Department is aggrieved because the Adjudicating Authority has travelled beyond the scope of the show cause notice and the discarded proposed classification without assigning any reason as to why it would not fall under WCS. On the other hand, the appellants are aggrieved, because he has confirmed the demand under a different service clearly travelling beyond the scope of the show cause notice and also not

considered their exclusion otherwise, irrespective of whether it would fall under WCS or construction of residential complex on the ground their being independent villas. We also note that while there has been an amendment in 2010 by adding an explanation making the service provider providing construction of residential complex service liable to service tax, which has already been relied upon by the Adjudicating Authority, it cannot take away the fact that the service itself would not be classifiable under construction of residential service, per se, as it involves material portion also. Therefore, reliance placed by the Commissioner on explanation 1 is also erroneous to that extent.

8. Therefore, in the interest of justice, we consider it appropriate to remand the matter in respect of both the appeals to the original Adjudicating Authority to decide the matter afresh in view of the charges raised in the show cause notice and grounds taken by the appellant. The appellant will also be entitled to advance any arguments in relation to their defense before the Adjudicating Authority, in relation to exclusion of their service from the scope of service of WCS on account of it's being independent villas. The order dated 25.04.2016 is set aside and remanded back to re-examine the levability of service tax in terms of SCNs dated 10.04.2012 & 03.12.2013, keeping in view of observations, supra.

9. Both the appeals are disposed of by way of remand.

(Dictated and pronounced in open court)

Certified as downloaded from the website

jaya

29/8/15
Deputy Commissioner
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
Customs, Excise & Service Tax Appellate Tribunal
हैदराबाद/Hyderabad - 500 004.

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
FIRST FLOOR, HMWSSB BUILDING, REAR PORTION, KHAIRATABAD, HYDERABAD-500004
SERVICE TAX APPEAL BRANCH**

Dated: 14/08/2025

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/30291-30292/2025-ST[DB] dated 2025-07-22

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Deputy/Asstt. Registrar (SERVICE TAX Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/30753/2016	Mehta And Modi Homes 5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.g.road, Secunderabad, Telangana 500003
2	ST/30739/2016	Commissioner of Central Tax-Secunderabad KENDRIYA SHULK BHAVAN, L.B STADIUM ROAD, BASHEERBAG, HYDERABAD TELANGANA 500004
		Name and Address of Respondent
3	ST/30753/2016	Commissioner of Central Tax-Secunderabad KENDRIYA SHULK BHAVAN, L.B STADIUM ROAD, BASHEERBAG, HYDERABAD TELANGANA 500004
4	ST/30739/2016	MEHTA & MODI HOMES 5-4-187/3 & 4, 1ST FLOOR, MG ROAD SECUNDERABAD, HYDERABAD TELANGANA 500003

Other Appellants and Respondents as per Annexure

Copy To**5 Advocate(s) / Consultant(s):**

Hiregange & Associates Chartered Accountants
(Hyd)
4th Floor, West Block, Srida Anushka Pride,
Road No. 12, Banjara Hills, Hyderabad
Hyderabad,, Telangana, 500034

06 Additional Party's Name & Address :**7 Office Copy****8 Guard File**

Deputy/Asstt. Registrar (SERVICE TAX Appeal Branch)

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

REGIONAL BENCH - COURT NO. - I

Service Tax Appeal No. 30739 of 2016(Arising out of **Order-in-Original** No.. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)**Commissioner of Central Tax
And Central Excise
Secunderabad - GST**Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana - 500 004.

..

APPELLANT

VERSUS

M/s Mehta And Modi Homes5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad,
Telangana - 500 003.

..

RESPONDENT

AND

Service Tax Appeal No. 30753 of 2016(Arising out of **Order-in-Original** No.. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)**M/s Mehta And Modi Homes**5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad,
Telangana - 500 003.

..

APPELLANT

VERSUS

**Commissioner of Central Tax
& Central Excise
Secunderabad - GST**Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana - 500 004.

..

RESPONDENT**APPEARANCE:**

Shri Lakshman Kumar K, CA for the Assesse.

Shri K. Sreenivasa Reddy & Shri V R Pavan Kumar, ARs for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)****FINAL ORDER No. A/30291-30292/2025**Date of Hearing: 22.07.2025
Date of Decision: 22.07.2025**[ORDER PER: A.K. JYOTISHI]**

In appeal no. ST/30739/2016, the Department is in appeal against the common Order-in-Original No. HYD-EXCUS-001-COM-003-16-17 dated 25.04.2016, whereby the Commissioner has upheld the demand under the category of construction of Residential Complex service during the period 01.01.2011 to 31.12.2011 (SCN dated 10.04.2012) and 01.01.2012 to 30.06.2012 (SCN dated 03.12.2013). The main ground taken by the Department is that while the show cause notice has proposed classification under the Works Contract Service (WCS) falling under 65(105)(zzzza) of Finance Act 1994, while it has been upheld under Construction of Complex Service. Therefore, the Commissioner has clearly gone beyond the classification proposed in the show cause notice by holding said service under a different category of service.

2. Similarly, the appellant M/s Mehta And Modi Homes have also come in appeal against the said order dated 25.04.2016 to the extent the demand has been confirmed by the Commissioner against them under the category of Construction of Residential Complex Service.

3. Learned AR has mainly submitted that the Department is aggrieved because the Commissioner has gone beyond the scope of the show cause notice by holding the said classification under the category of construction of complex service and also confirming the demand there under. He also points out that admittedly this is not in dispute that the service would fall within the category of WCS, as there is a transfer of property in goods in the execution of contract. Therefore, there is a factual error by classifying it under Heading 65(105)(zzzh) as it would only cover construction simplification where material portion is not involved. He has relied on catena of judgments in support that the order passed where the Adjudicating Authority has gone beyond the show cause notice is bad in law.

4. On the other hand, Learned CA is submitting that they have appealed against the said order on two grounds. Firstly, the Commissioner has travelled beyond the scope of the show cause notice by confirming the demand under construction of complex service, in as much as the proposal was under the category of WCS. He is not disputing that this would fall under WCS, but he is pleading that as held by various Co-ordinate Benches, confirmation of demand beyond the scope of show cause notice cannot be sustained. Secondly, he also argues that even if it is falling under WCS, they were engaged in construction of independent houses, as is evident from the two contracts, which were entered by them with the prospective buyers, one for the semi-finished independent villas and another for completion of the said independent villas of each customer. Therefore, even if it is treated as WCS, it would get excluded from the purview of WCS and on that count itself the demand would not sustain against them. He has relied on the judgment of Raghava Estates & Properties Ltd., Vs Commissioner of Central Tax, Guntur and Vice Versa [2024 (8) TMI 1336 (CESTAT-Hyd)] in para 9 held as follows:

9. Learned AR submits that the Adjudicating Authority has confirmed the demand under the category of 'Construction of complex service' while the SCN was issued under the category of 'Works Contract service'. Only because of such an Order, the Revenue has come up on Appeal before the Tribunal. He submits that the Tribunal should take into account that the Appellant himself has been claiming their services to be under the category of 'Works Contract service'. Therefore, the error committed by the Adjudicating Authority should now be rectified and the Tribunal may hold that the correct classification of the services would be under 'Works Contract service'. After this, the matter may be remanded to the Adjudicating Authority for quantifying the demand after considering the fact that Tribunals and Hon'ble High Courts have been consistently holding that no Service Tax is payable under whichever category for such services till 30.06.2010. He makes further written submissions about the abatement allowed by the Adjudicating Authority while confirming the demand.

5. Heard both the sides and perused the records.

6. We find in this issue, the appellants were engaged in construction of residential villas. Department felt that they were liable to pay service tax and therefore two show cause notices were issued dated 10.04.2012 and 03.12.2013 covering the period January 2011 to December 2011 and January 2012 to June 2012 respectively classifying the service under WCS. The Commissioner has gone through the factual matrix and also the submissions made by the party and thereafter held that the said service would be properly classifiable under the category of construction of Residential complex service falling under 65(105)(zzzh) and accordingly confirmed the demand. Therefore, the demand in full has been confirmed. The Department is however, aggrieved because he has not examined the proposed classification nor given any reason about classification being not applicable in the given factual matrix in as much as it is not in dispute that materials were also involved in execution of work involving transfer of property in goods. Therefore, this was a clear case, where the activity would have to fall under WCS during the material time and this aspect is also not disputed by the appellant that this service would properly be falling under WCS itself. It also is apparent that the appellant never claimed that they are not falling under WCS before the Adjudicating Authority.

7. We find that any party, including Department, is entitled to file an appeal against any order whereby he is an aggrieved person and in this case, on the one hand the Department is aggrieved because the Adjudicating Authority has travelled beyond the scope of the show cause notice and the discarded proposed classification without assigning any reason as to why it would not fall under WCS. On the other hand, the appellants are aggrieved, because he has confirmed the demand under a different service clearly travelling beyond the scope of the show cause notice and also not

considered their exclusion otherwise, irrespective of whether it would fall under WCS or construction of residential complex on the ground their being independent villas. We also note that while there has been an amendment in 2010 by adding an explanation making the service provider providing construction of residential complex service liable to service tax, which has already been relied upon by the Adjudicating Authority, it cannot take away the fact that the service itself would not be classifiable under construction of residential service, per se, as it involves material portion also. Therefore, reliance placed by the Commissioner on explanation 1 is also erroneous to that extent.

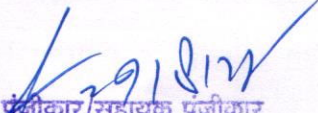
8. Therefore, in the interest of justice, we consider it appropriate to remand the matter in respect of both the appeals to the original Adjudicating Authority to decide the matter afresh in view of the charges raised in the show cause notice and grounds taken by the appellant. The appellant will also be entitled to advance any arguments in relation to their defense before the Adjudicating Authority, in relation to exclusion of their service from the scope of service of WCS on account of it's being independent villas. The order dated 25.04.2016 is set aside and remanded back to re-examine the leviability of service tax in terms of SCNs dated 10.04.2012 & 03.12.2013, keeping in view of observations, supra.

9. Both the appeals are disposed of by way of remand.

(Dictated and pronounced in open court)

Certified as downloaded from the website

jaya


उप प्रज्जीकार/सहायक प्रज्जीकार
Deputy Registrar/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अधिनियम
Customs, Excise & Service Tax
हैदराबाद/Hyderabad

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)