IN THE HIGH COURT OF JUDICATUREAT: HYDERBAD
FOR THE STATE OF TELANGANA &
FOR THE STATE OF ANDHRA PRADESH
(SPECIAL ORGINAL JURISDICTION)
W.P.NO. OF 2017

BETWEEN:

M/s Greenwood Estates,
5-4-187/3 & 4, II Floor,
M.G. Road, Secunderabad,
Represented by its Managing Partner,
Mr. SohamModi.

..... Petitioner

And

1. Superintendent (Central Tax)
Central Tax, Central Exercise & Customs,
Office of the Superintendent of Central Tax, Central Exercise & Customs,
Ramgopalpet Range I
3rd Floor, CLS Buildings,
Nampally Station Road,
Abids, Hyderabad – 500001.

2. The Commissioner of Service Tax,
Service Tax Commissionerate,
Red Hills, Hyderabad.

3. Union of India,
Ministry of Finance,
Department of Revenue,
Rep., by its Secretary (Revenue),
North Block – New Delhi – 110001.

4. The Manager,
HDFC Bank Limited,
UshaKiran Complex, Ground Floor,
Paradise Circle, S.D. Road,
Secunderabad – 500 003.

..... Respondents

For GREENWOOD ESTATES

Partner

AFFIDAVIT

I, SohamModi, S/o. Satish Modi, aged 45 years, Managing Partner of the Petitioner Firm, Resident of Hyderabad, do hereby solemnly affirm and state on oath as follows:

1. That I am the Managing Partner of the Petitioner herein and as such I am well acquainted with the facts of the case and swear to the contents of this affidavit. I am authorized to file this affidavit on behalf of the petitioner in support of the writ petition.

2. I am filing the present writ petition challenging the impugned Notice bearing No. O.C.No. 23/2017-Rgpet-I dated 01.11.2017**(Annexure P-1)** issued by Respondent No.1 under Section 87 of the Finance Act, 1994, directing Petitioner's Banker i.e. Respondent No.4to transfer an amount of Rs. 1,29,75,670/- from the Petitioner's Bank account to Respondent No.1.

3. It is submitted that the Petitioner is a partnership firm, bearingService Tax Registration No. AAHFG0711BST001, engaged in the business of sale of residential flats to prospective buyers during and after construction.

4. On 21.10.2015 the Respondent No. 2 issued a Show Cause Notice wherein it had sought to levy service tax on "works contract services" for an amount of Rs. 69,13,733 for the period January 2014 to March 2015. The said Show Cause Notice only sought to levy service tax on amounts received toward construction agreements and specifically excluded the amounts received towards sale deed. However, in the annexure to the Show Cause Notice demonstrating the computation, it quantified service tax liability on gross amount received by the Petitioner which includes amount received towards sale deeds. **(Annexure P2).** The Petitioner submits that in its reply

For GREENWOOD ESTATES

Partner

to the Show Cause Notice it has objected to inclusion of amounts received towards sale deed for quantifying the liability.

5. The Petitioner submits that the Respondent No.2 issued an Order in Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016.**(Annexure P-3).** In the said order, though the Respondent No. 2 has categorically held that it is not levying service tax on sale deed. The Respondent No. 2 held that:

   "...no service tax demanded on the sale deed value in light of board circular dated 29.01.2009. After execution of sale deed, the assessee had entered into another agreement with the customer for completion of the sale flats and the service tax is confined only to his agreement...".

6. The Petitioner states that in spite of accepting the contention of the Petitioner that no service tax can be levied on Sale Deeds, the Respondent No.2 while computing the service tax has included the value of the sale deeds.

7. Aggrieved by the action of the Respondent No. 2, the Petitioner filed Rectification Application under Section 74 of Finance Act, 1994.**(Annexure P-4).** By the said Rectification Application, the Petitioner sought the Respondent No. 2 to amend the order by excluding the amount received towards sale deed while computing service tax payable. The said Rectification Application is still pending.

8. The Petitioner states that even before the Rectification Application is decided the Respondent No.1 has issued the impugned Notice demanding an amount of Rs. 1,29,74,670/- (Rupees One Crore Twenty Nine Lakh Seventy Four Thousand Six Hundred and Seventy Only), which includes

For GREENWOOD ESTATES

Partner

1

principal amount of Rs. 69,13,733/-, interest of Rs. 53,59,564/- and penalty of Rs. 7,01,373/-.

9. The Petitioner challenges the impugned order on the following grounds:

GROUNDS

A. The Respondent No.1 has not satisfied the condition precedent by invoking the powers under Section 87. The said powers can only be invoked when Petitioner has failed to pay the amounts. In the present case, the Petitioner failing to pay the amounts does not arise, since the Rectification Application is maintainable and is pending adjudication.

B. The Respondent No.1 could not invoke the powers under Section 87 without deciding the Rectification Application pending before it under S. 74 of the Finance Act 1994.

C. The Impugned Notice suffers from lack of jurisdiction, since Respondent No.1 is seeking for recovery of money which is admittedly beyond the jurisdiction of the Respondent No.1.

10. The Petitioner has no other alternative remedy, except to approach this Hon'ble Court under Article 226 of the Constitution of India for the redressal of its grievances.

11. The Petitioner has not filed any writ petition, suit or any other proceeding for the relief or reliefs sought in this writ petition.

12. The Petitioner reserves its right to file better or additional affidavit, if any, if the circumstances so warrant.

13. Thematerial papers filed herein may be read as part and parcel of this affidavit.

For GREENWOOD ESTATES.

Partner

In view of the above, it is prayed that pending the disposal of the above writ petition, this Hon'ble Court may be pleased to suspend the Notice bearing O.C.No. 23/2017-Rgpet-I dated 01.11.2017 issued by Respondent No.1 to the Respondent No.4 under Section 87 of the Finance Act, 1994 directing the Respondent No.4 to withhold the bank account pertaining to the Petitioner, in the interest of justice and pass such other order(s) as this Hon'ble Court deems fit and proper in the circumstances of the case.

In view of the above, it is prayed that pending the disposal of the above writ petition, this Hon'ble Court may be pleased to direct the Respondent No.4 not to give effect to the Notice bearing O.C.No. 23/2017-Rgpet-I dated 01.11.2017in the interest of justice and pass such other order(s) as this Hon'ble Court deems fit and proper in the circumstances of the case.

PRAYER

For the reasons aforesaid, it is humbly prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Direction or Order more in the nature of Writ of Mandamus,

a. Setting aside Notice bearing O.C.No. 23/2017-Rgpet-I dated 01.11.2017 issued by Respondent No.1 directing Respondent No.4 to transfer an amount of Rs. 1,29,75,670/- from the Petitioner's Bank account to Respondent No.1 as illegal, arbitrary, without jurisdiction, contrary to the provisions of Finance Act, 1994 and violative of fundamental rights under Article 14 and 19(1)(g)

b. and pass such other order(s) as this Hon'ble Court deems fit and proper in the extraordinary circumstances of the case in the interests of justice.

For GREENWOOD ESTATES

Partner

Solemnly affirmed and signed

on this the day of November,

2017 before me at Hyderabad.

For GREENWOOD ESTATES

Partner

DEPONENT

ADVOCATE:: HYDERABAD

VERIFICATION

I, SohamModi, S/o. Satish Modi, aged 45 years, Resident of Hyderabad, deponent herein, do hereby declare that the above contents mentioned in Paras (1) to (15) are based on the records of the Petitioner and are believed to be true; hence verified on this day, the day of November, 2017 at Hyderabad.

For GREENWOOD ESTATES

Partner

ADVOCATE

DEPONENT

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF JANUARY
TWO THOUSAND AND EIGHTEEN

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION NO: 40724 OF 2017

Between:

M/s. Greenwood Estates, 5-4-187/3 & 4, II Floor, M.G.Road, Secunderabad, Represented by its Managing Partner, Mr. Soham Modi.

.....Petitioner

AND

1. Superintendent (Central Tax) Central Tax, Central Excise & Customs, Office of the Superintendent of Central Tax, Central Excise & Customs, Ramgopalpet Range I, 3rd Floor, CLS Buildings, Nampally Station Road, Abids, Hyderabad - 500001.
2. The Commissioner of Service Tax, Service Tax Commissionerate, Red Hills, Hyderabad.
3. Union of India, Ministry of Finance, Department of Revenue, Rep. by its Secretary (Revenue), North Block - New Delhi - 110001.
4. The Manager, HDFC Bank Limited, Usha Kiran Complex, Ground Floor, Paradise Circle, S.D. Road, Secunderabad - 500 003.

.....Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Direction or Order more in the nature of Writ of Mandamus,

a. Setting aside Notice bearing O.C. No. 23/2017-Rgpet-1 dated 01.11.2017 issued by Respondent No.1 directing Respondent No.4 to transfer an amount of Rs.1,29,75,670/- from the Petitioner's Bank account to Respondent No.1 as illegal, arbitrary, without jurisdiction, contrary to the provisions of Finance Act, 1994 and violative of fundamental rights under Article 14 and 19(1)(g)

W.P.M.P.NO: 50574 OF 2017:

Petition under Section 151 of C.P.C. praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to direct the Respondent No.4 not to give effect to the Notice bearing O.C. No.23/201 7-Rgpet-I dated 01.11.2017 in the interest of justice.

Contd.....2

W.P.M.P.NO: 50575 OF 2017:

Petition under Section 151 of C.P.C. praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to suspend the Notice bearing O.C.No.23/2017-Rgpet-I dated 01.11.2017 issued by Respondent No.1 to the Respondent No.4 under Section 87 of the Finance Act, 1994 in the interest of justice.

Counsel for the Petitioner: SRI K.VIVEK REDDY

**Counsel for the Respondents: SRI B.NARASIMHA SARMA,
SENIOR STANDING COUNSEL FOR
CUSTOMS, CENTRAL EXCISE AND
SERVICE TAX**

The Court made the following: ORDER

Order : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed with the grievance that when a rectification application is pending before respondent No.2, respondent No.1 has issued demand notice for payment of service tax under the original assessment order.

2. Mr.K.Vivek Reddy, learned counsel for the petitioner, submitted that following the impugned notice issued by the 1st respondent, the petitioner's accounts have been frozen and that, further coercive steps for recovery of the disputed tax are being initiated by the said respondent.

3. Mr.B.Narasimha Sarma, learned Senior Standing Counsel for Customs, Central Excise and Service Tax, on instructions submitted that the rectification application filed by the petitioner is pending before respondent No.2.

4. In these facts and circumstances of the case, we are of the opinion that it would be in the interests of justice that respondent No.1 is directed not to recover the disputed tax till respondent No.2 disposes of the rectification application.

5. Accordingly, without adjudicating on the merits of the case, respondent No.1 is directed not to recover the disputed tax, till respondent No.2 passes appropriate orders on the rectification application. He is further directed to forthwith defreeze the accounts of the petitioner, if the same have been frozen as claimed by the

petitioner, to enable it to operate the accounts for its day to day activities.

6. Subject to the above directions, the writ petition is disposed of.

7. As a sequel to the disposal of the writ petition, miscellaneous petitions filed by the petitioner, are disposed of as infructuous.

Sd/- V.DIWAKAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

TO

1. The Superintendent (Central Tax) Central Tax, Central Excise & Customs, Office of the Superintendent of Central Tax, Central Excise & Customs, Ramgopalpet Range I, 3rd Floor, CLS Buildings, Nampally Station Road, Abids, Hyderabad - 500001.
2. The Commissioner of Service Tax, Service Tax Commissionerate, Red Hills, Hyderabad.
3. The Secretary (Revenue), Union of India, Ministry of Finance, Department of Revenue, North Block - New Delhi - 110001.
4. The Manager, HDFC Bank Limited, Usha Kiran Complex, Ground Floor, Paradise Circle, S.D. Road, Secunderabad - 500 003.
5. One CC to Sri K.Vivek Reddy, Advocate (OPUC)
6. One CC to Sri B.Narasimha Sarma, Senior Standing Counsel for Customs, Central Excise and Service Tax (OPUC)
7. Two CD Copies.

PSB

HIGH COURT

DATED: 02/01/2018

HIGH COURT OF JUDICATURE AT HYDERABAD
DESPATCHED
20 JAN 2018
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

ORDER

W.P.NO: 40724 OF 2017

DISPOSING OF THE W.P.
WITHOUT COSTS

Certified Copy Application Filed on 02-01-18
Copy Ready on 20-01-18
Copy Delivered on 20-01-18

Section Officer
Copying Section
High Court of Judicature at Hyderabad
for the State of Telangana and the
State of Andhra Pradesh

20/1/18