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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH. WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/23 /2008 Date 10/04/2008
ST/S/110/08

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
GREENVIEW LAND & BUILDCON LTD.
SCO-854, NAC, MANIMAJRA, CHANDIGARH
GREENVIEW LAND & BUILDCON LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/71/08 **Customs** dated 07.04.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alongwith Stay Order No ST/124/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   Sh. Neeraj Jain, CA,
   C/O Appellant
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Service Tax Appeal No. 23 of 2008 with Service Tax Stay No. 1/2 of 2008
[Arising out of order in appeal No. 452/CE/CHD/2007 dated 9.10.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

Date of Hearing/ Decision: 07.04.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s Greenview Land & Buildcon Limited
Appellant
[Rep. by Mr. Neeraj Jain, C.A.]

Vs.

CCE, Chandigarh
Respondent
[Rep. by Mr. R.K. Verma, DR]

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No ST/71/08
Stay Order No ST/124/08

Per M. Veeraiyan

After hearing both sides on the stay petition for a while, we felt that the appeal itself could be decided finally and therefore grant waiver of pre deposit of amounts as per the impugned order and proceed to dispose the appeal.

2. In the present case, it is submitted that the appellant is engaged in construction of complex; that they are not engaging any contractor or service provider in relation to construction of the complex and that the entire work has been carried out by the appellant as developer and builder and the ready built flats are being sold.

The original authority, on the basis of a circular dated 16.2.2006 issued by DGST held that on any such construction of complexes service tax is attracted and accordingly confirmed the demand of duty.

Commissioner (Appeals) vide his order dated 9.10.2007 rejected the appeal of the appellant for default of payment of pre-deposit as ordered by him by his stay order and consequent non-compliance of provisions of section 35F.

3. Learned Advocate submits that this circular of the DGST stand superseded by a consolidated circular No.96/7/2007-ST dated 23.8.2007 wherein it has been clarified vide clause No. 079.01(b) as follows.

> "If no other person is engaged for construction work and the builder/ promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person, then in such cases, (i) service provider and service recipient relationships does not exist, (ii) services provided are in the nature of self-supply of services".

Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise".

4. We note that the CBEC Circular dated 23.8.2007 is prima-facie in favour of the appellant and the said circular was not available when the matter was considered by the original authority and the Commissioner (Appeals). Since the circular is by way of clarification of the law, we hold that it will apply retrospectively. We find that the matter has been decided by the Commissioner (Appeals) on merits. We set-aside the order of the Commissioner (Appeals) and remand the matter for denovo consideration without insisting on pre-deposit of the disputed amount and in the light of Circular No. 96/7/2007 dated 23.8.2007.

5. Appeal is allowed by way of remand. Stay petition is also disposed of.

(Dictated and pronounced in the open Court)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]