

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

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 31034 of 2018

(Arising out of **Order-in-Appeal** No.HYD-EXCUS-SC-AP2-0025-18-19-ST dated 27.04.2018
passed by Commissioner of GST & Central Excise (Appeals-II), Hyderabad)

M/s Greenwood Estates

#5-4-187/3 & 4, 11 Floor,
Soham Mansion, M G Road,
Secunderabad,
Telangana – 500 003.

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APPELLANT

VERSUS

**Commissioner of Central Tax
Secunderabad - GST**

Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

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RESPONDENT

APPEARANCE:

Shri V S Sudhir, CA for the Appellant.

Shri Pradeep Saxena & Shri A Rangadham, ARs for the Respondent.

**CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30205/2024

Date of Hearing:19.02.2024
Date of Decision:12.03.2024

[ORDER PER: ANIL CHOUDHARY]

The Appellant is engaged in construction and sale of residential houses/units in the venture named as 'Flower Heights'. The Appellant after acquisition of land and obtaining the permission of the competent authority undertakes the construction. In the course of construction the Appellant have sold unfinished units to prospective buyers by entering into agreements as follows: –

"sale deed for undivided portion of land together with semi finished flat. The amount of sale consideration includes the cost of construction of the unfinished unit along with the sale of undivided portion of land. Sale deed is registered on payment of appropriate stamp duty. The VAT liability on the deemed sale of material component under the state act is also discharged".

2. Another agreement is entered into with the buyer of the unfinished flat/unit for undertaking or completing the construction.

3. It appeared to Revenue that although Appellant is registered with the department but they are not discharging service tax liability properly and were not filing the ST-3 returns regularly. Upon enquiry revenue found that for the period January 2010 to December 2010, Service Tax return was not filed. The Appellant was of the view that as they are constructing house/units for the individual use of the buyer, the same falls under the exclusion clause under Section 65(91a) of the Finance act.

4. It appeared to Revenue that till the execution of sale deed the property remains in the name of the assessee/builder and services rendered thereto are self services. Therefore, there is no levy of service tax on the services rendered till the date of sale deed, that is on the value of consideration shown in the sale deed. But as regards the value of service rendered under the construction agreement, post sale, there exists the service provider and service receiver relationship between the assessee and the customers. Therefore such service invariably attracts service tax under section 65(105)(zzzza). It further appeared that the complex developed by the Appellant qualifies to be a residential complex as defined under Section 65(91a), as it has got common facilities like Park, common water supply etc., and the layout was approved by HMDA and the Alluvial municipality. On execution of the sale deed the right in the property/unit got transferred to the customer and the service provided thereafter is liable to service tax. The Appellant had submitted detailed statement received by revenue on 22nd April 2011, giving the house-wise amounts received during the period January 2010 to December 2010. The gross amount received appears to be Rs. 11,65,14,336/- on which Service Tax was demanded Rs.48,00,391/-. Similar show cause notice was issued for the period January 2011 to December 2011 on the gross amount received Rs.11,36,37,141 demanding service tax of Rs. 46,81,850/-, with proposal to appropriate service tax already deposited Rs.5,98,671/-. The relied upon documents in the Show Cause Notice are -

- Show Cause Notice(1) dated 23.04.2011 – Statement submitted by M/s Greenwood Estates and received on 22.04.2011.
- Show Cause Notice(2) dated 24.04.2012 – Statement submitted by M/s Greenwood Estates and received in this office on 08.02.2012.

5. This is the 2nd round of litigation. In the earlier round vide common Order-in-Original dated 31.08.2012, it was accepted that service tax cannot be demanded on the sale deed value. However in the order while calculating the tax liability the said amount was included in the taxable turnover. Being aggrieved the Appellant filed appeal before the Commissioner (Appeals) who vide impugned order in appeal dated 27.02.2013, did not agree on the contention of personal use, but did find merit in the plea of requantification and accordingly remanded the matter to the original authority to recalculate the value of taxable service after verification of details. Being aggrieved Appellant had preferred appeal before this Tribunal. Vide Final Order No. 20401/2014 dated 25.03.2014 this Tribunal remanded the matter to the Original Authority to consider all issues including quantification of the tax liability, if any. However the Adjudicating Authority – Additional Commissioner in the Order-in-Original dated 09.06.2017, confirmed the demand rejecting the submissions. No findings were recorded on various submissions/grounds raised by the Appellant. Being aggrieved, in the appeal filed before the Commissioner (Appeals), vide Order-in-Appeal dated 27.04.2018, part of the demand was confirmed and remanded back for requantification. Being aggrieved the Appellant assessee is in appeal before this Tribunal.

6. Learned Counsel for the Appellant inter-alia urges that the construction done by the Appellant is for personal use of the customer and therefore not liable to service tax. The construction for personal use of the customers/individual falls within the ambit of exclusion clause under Section 65(91a), which categorically states that personal use includes permitting the complex/unit for use as residence by another person on rent or without consideration. Hence no service tax is chargeable on the consideration received under the agreement of construction for completing the house/unit which have been sold vide sale deed. Appellant relies on the precedent ruling of this Tribunal in Modi Ventures Vs CCT & GST Final Order No. 30882/2020 (Hyderabad Bench). This Tribunal observed under similar circumstances, that there is no agreement for completion of the entire complex, but there are a number of agreements with different individual house owners for completion of their unit/building. In other words, the individual house owner is engaging the Appellant for construction of the residential unit for his personal use, and residence. It was held that no service tax is chargeable

from the builder/assessee under the agreement entered into by them with the buyers for completion of their unit/building.

7. It is further urged that the finding in para 9 of the impugned order that the Appellant have not disputed the demand on the amount received under the construction agreement, is not correct, in as much as the Appellant have been contesting the same right from the show cause notice stage.

8. It is further urged that it has been held in the Appellant's own case by this Tribunal in the Final Order reported at [2019 (2) TMI 772 – Cestat] that service tax is not applicable on construction services prior to the period 01.07.2010. Reliance is placed on the ruling of this Bench of the Tribunal in CCE Vishakhapatnam versus Pragati Edifices Private Ltd., [2019 31 GSTL 241 (Tri-Hyd)]. Although in the impugned order it have not been categorically held that Appellant is liable to service tax for the period prior to 01.07.2010, however the demand have been confirmed.

9. It is further urged, that in spite of it being the admitted case of the revenue that service tax cannot be demanded on the sale consideration mentioned in the sale deed executed between the Appellant and the buyer for the residential unit. However the adjudicating authority have erred in confirming the demand including on the sale consideration stating that under the composition scheme, does not exclude the value of sale deed. The impugned order is also beyond the scope of the show cause notice. This is also confirmed as per the observation in the Order-in-Original dated 31.08.2012 wherein para 17 it is observed – no service tax have been demanded on the sale deed value in light of Board circular dated 29.01.2009. After execution of sale deed, they have entered into an agreement with the customer for completion of the said flat and the service tax demand is confined to this agreement. While confirming the demand in the impugned orders, non-taxable amounts have also been included like reimbursements on account of VAT, registration charges, etc.

10. Learned counsel further urges that so far liability to service tax on consideration received towards completion of the unfinished unit already sold, is also not taxable, as service provided to the owner/buyer of the said unit, is excluded in the exclusion clause under Section 65(91a) as it have been held by this Tribunal in Modi Ventures Vs Commissioner of Central tax, Secunderabad (supra) as follows: –

9. This leaves us with the period from 01.07.2010 to 31.12.2010.

10. The undisputed fact is that appellant had entered into two contracts one for sale of land and the second construction agreement for the flat with individual buyers. For a tax to be levied under works contract service, in the first place, it must be either construction of a new residential complex or a part thereof or completion of unfinished services related to it. The term “residential complex” under Section 65(91a) specifically excludes any construction for personal use by an individual. This builder has planned his business with a separate construction agreement entered into with individual flat owners. Hence they get excluded from the definition of works contract service. Therefore no service tax can be levied even for the period post 01.07.2010.

Accordingly the learned counsel prayed for allowing the appeal with consequential benefits.

11. Learned AR for revenue opposing the appeal relies on the impugned order. It is further urged that Appellant is not entitled to benefit of exclusion clause in Section 65(91a), as exemption is confined to the service received for designing on planning of the layout only.

12. Having considered the rival contentions, we find that the issue herein is squarely covered in favour of the Appellant vide Final Order in Modi Ventures of this Tribunal (supra), wherein it have been categorically held under similar facts and circumstances, no service tax is chargeable both for the period prior to 01.07.2010 and also for the period after 01.07.2010, being service provided to the individual buyer of the flat for personal use. Accordingly we hold that the Appellant is not liable to any service tax.

13. In view of our finding we allow this appeal and set aside the impugned order. The Appellant shall be entitled to consequential benefits in accordance with law.

(Order Pronounced in open court on 12.03.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)