



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By Regd. Post

DIN No.: 20230264SW000000D6FD

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1087/2022-APPEAL / 6098-02
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-111/2022-23 and 07.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.02.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/ST/Paras Mani Tripathi/85/2021-22 dated 29.03.2022 passed by the Deputy Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Flora Infrastructure, 21, Manichandra Society, Vibhag-5, Surdhara Circle, Thaltej, Ahmedabad, Gujarat-380052

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course



of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

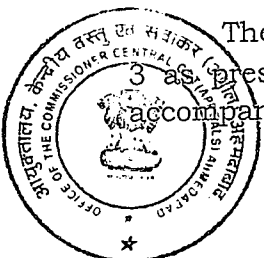
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA- prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of



Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

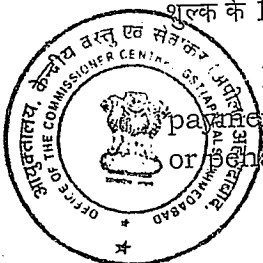
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



अपीलियआदेश / ORDER-IN-APPEAL

This appeal has been filed by M/s. Flora Infrastructure, Shapath Heights, Opposite Sopan, Near Gayatri Mandir, Kalol, Gandhinagar, Gujarat - 382721 (hereinafter referred to as "the appellant") against the Order – In – Original No. KLL DIV/ST/Paras Mani Tripathi/85/2021-22, dated 29-03-2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division: Kalol, Commissionerate: Gandhinagar (hereinafter referred to as "the adjudicating authority"). The appellant were engaged in providing residential construction services and having Service Tax Registration No. AADFF5352RSD001.

2. During the course of audit of the records of the appellant conducted by the officers of Central GST, Audit, Ahmedabad for the period from April, 2015 to June, 2017, it was observed that the appellant had stopped payment of Service Tax on the advances/part payment and full payment received from the members towards flats booked/purchased by the member of residential scheme from the period from 15.09.2016 to 30.06.2017, after receiving completion certificate issued by Architect Interior.

2.1. The appellant had launched a scheme of 120 flats named 'Shapath Height', falling under the jurisdiction of Nagarpalika of Kalol. They had applied for permission of construction work from Kalol Nagarpalika through "RAJA CHITHI" No. 20 dated 18.05.2015, but they failed to fulfil the Condition No. 18 of the said "RAJA CHITHI". They had also requested the Ahmedabad Urban Development Authority (AUDA) to grant them permission to develop the FP No. 309, S.R.936/1 Kalol, TP-5 (KalolSaij-Borisana). Later on, vide their Application No. AUDA/02/2016/1761, they had applied for Building Use Permission to AUDA and fees of Rs. 87,156/- was paid through Cheque No. 001965 of HDFC Bank. The said transaction was entered in ledger account of the appellant on 28.02.2017. The appellant had given possession to their members before 15.09.2016. However, in case of 15 members, they had collected Rs. 1,72,00,000/- and the sale deed were executed during 16.09.2016 to 30.06.2017. They had acquired Completion Project Certificate on 15.09.2016 from the Architect Interior, Director of Design Code Pvt Ltd. Based on this Completion Certificate dated 15.09.2016, they had not paid service tax on Rs. 1,72,00,000/- received from their members of 15 flats, which were booked after



2.2. The appellant had vide letter dated 11.12.2019 explained that in their case the Competent Authority is Architect and as they had produced the Project Completion Certificate on 15.09.2016, the amount collected after that date is not chargeable to Service Tax. The reply submitted by the appellant was not accepted by the audit as it appeared that they had failed to appreciate Section 66E of the Finance Act, 1994(FA,1994) wherein meaning of "Competent Authority" is clearly explained. The commencement letters (Rajachitti) for the construction of 'Shapath Height had been issued by the Kalol Nagarpalika/AUDA, who is / are the Competent Authority. The appellant had not approached/applied before the Competent Authority for project Completion Certificate as well as for BU Permission and on their own decided to avail the exemption based on the Certificate issued by the Registered Architect interior. The Explanation (1) to Section 66E(b) of FA,1994 clarifies that in case of non-requirement of a certificate from the competent authority, a certificate issued by either an architect or an chartered engineer or a licensed surveyor as detailed from (A) to (C) to the Explanation (I) to Section 66E (b) of FA,1994 would be valid. It, therefore, appeared that the completion certificate issued by the Architect Interior would not be considered as valid. Accordingly, the audit officers observed that the appellant were liable to pay service tax on the advances/part payment/ full payment received from the members for flats. The amount of short paid service tax was quantified at Rs. 7,76,250/- for the period F.Y.2016-17 and F.Y. 2017-18 (Upto June, 2017).

2.3. The observations of the audit officers were contained in Revenue Para No. 1 of the Final Audut Report (FAR) No. 1663/2019-20 dated 11.06.2020.

2.4. Based on the audit observations, the appellant were issued Show Cause Notice under F. No. ADT/Cir-X/AP-64/01/Flora/19-20 dated 12.06.2020 (in short SCN) demanding service tax amouting to Rs. 7,76,250/- under the proviso to Section 73(1) of the Act alongwith interest under Section 75 of the Act. The SCN also proposed imposition of penalty under of Section 78(1) of the Finance Act, 1994.

3. The SCN was adjudicated by the adjudicating authority vide the impugned order wherein the proposals made in the SCN were confirmed.



4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred this appeal on grounds elaborated in subsequent paragraph.

4.1. The sole allegation in the show cause notice was that the appellant had stopped payment of service tax without obtaining BU Permission/Completion Certificate from the "Competent Authority". It is stated that the commencement letter for the construction of the scheme "Shapath Height" has been issued by the Kalol Nagarpalika / UD and the said authority is the "Competent Authority" to issue completion certificate/B U Permission in respect of the said scheme.

4.2. The adjudicating authority has erred in not considering the completion certificate issued by an 'architect' is also a 'competent authority' as per Section 66 E (b) of the Act. As per Section 66E (b), construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority is considered as 'declared service' for the purpose of levy of service tax. Section 66 E (b) reads as under:

(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation – For the purposes of this clause,--

(I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :

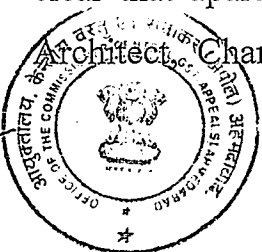
(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) ; or

(B) chartered engineer registered with the Institution of Engineers(India) ; or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

4.3. The explanation to the provisions of Section 66 E of the FA,1994 makes it clear that apart from Government authority or any authorized authority, registered Architect, Chartered Engineer, licensed surveyor is also an authority for issuing



completion certificate. In the above subject, Ministry of Finance has issued clarification, vide Order No.1/2010 dated 22.06.2010, specifying competent authority to issue completion certificate under Commercial or Industrial Construction Service and Construction of Residential Complex Service. The said order is reproduced below:

In exercise of the powers conferred by sub-section (1) of section 95 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, hereby makes the following Order, namely: -

1	(1)	<i>This Order may be called as the Service Tax (Removal of Difficulty) Order, 2010</i>
	(2)	<i>This Order shall come into force on the 1st day of July, 2010.</i>

2. For the purposes of sub-clauses (zzq) and (zzh) of clause (105) of section 65 of the Finance Act, the expression 'authority competent' includes, besides any Government authority,

(i) architect registered with the Council of Architecture constituted under the Architects Act,

1972 (20 of 1972); or

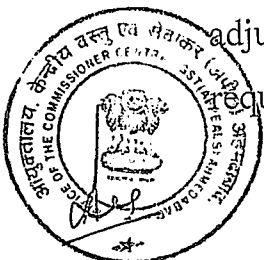
(ii) chartered engineer registered with the Institution of Engineers (India); or

(iii) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

who is authorized under any law for the time being in force, to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.

4.4. Explanation to Section 66E above read with Ministry of Finance Order No.01/2010 makes it is clear that the allegation of the department made in the show cause notice that the Kalol Nagarpalika / AUDA is the only competent authority for issuing completion certificate is inconsonance with the provisions of Section 66E of the Act. Therefore, the Completion Certificate of the registered Architect submitted by the appellant is valid and no service tax is payable in the matter as the consideration is received after completion of certificate by the competitive authority. Therefore, it would not be within the ambit of Service as defined under Section 65B (44) of the Act and the allegation made in the show cause notice is not sustainable.

4.5. While discarding the certificate of architect produced by the appellant, the adjudicating authority has not given any findings as to under which law, they were required to produce a certificate from Kalol Nagarpalika / AUDA. The adjudicating

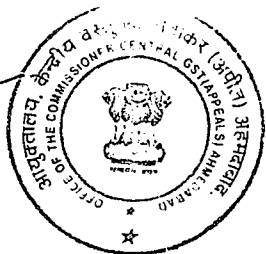


authority is also not sure as to whose certificate was required to be produced by the appellant with regard to completion of the residential complex constructed by them. At paragraph 16 of the impugned order, the adjudicating authority has observed as under:

16. From the explanation to Section 66E of Service Tax Act 194 (he is not having Correct knowledge of the statute under which Service tax is being levied) the meaning of 'competent authority' is clearly explained. In case of the assessee, it is observed that commencement letter (Rajachitti) for the construction of 'Shapath Height' has been issued by the KalolNagarpalika/AUDA who is/are the Competent Authority and thus the assessee should have approached/applied before them for issuance of completion certificate. It is not the assessee's case that there was non-requirement of completion certificate from AUDA, as they have themselves applied for such completion certificate from AUDA. As per the provisions of the Finance Act 1994, only where there is non-requirement of procuring completion certificate from the Government or any authority authorized to issue completion certificate. I find that the Architect is not the competent authority to issue completion certificate in the assessee case as there is requirement of procuring completion certificate by Nagarpalika /AUDA in the assessee case'.

4.6. From the above, it is evident that the adjudicating authority is not sure of the statute under which the service tax is being levied and demanded- He is referring to Service Tax Act 1944, which shows the lack of competency of the officer issuing the quasi judicial order. Therefore, the adjudicating authority cannot be expected to understand the correct prospects of the statute. When holding that Architect is not the competent authority to issue completion certificate, he ought to have mentioned the correct provision of law which mandates the assessee to obtain a certificate from Kalol Nagarpalika or AUDA. The adjudicating authority also failed to point out the authority, whether it is Kalol Nagarpalika or AUDA, from whom the assessee was obligated to obtain completion certificate. Without citing the correct requirement of law or authority for producing a certificate from Kalol Nagarpalika or AUDA, the impugned order is perverse and is not sustainable under law.

4.7. The adjudicating authority also failed to follow the order of Hon'ble Tribunal, Allahabad in case of M/s ABA Builders Ltd V/s Commissioner of C.EX & S.T Ghaziabad [2019 (21)GSTL 539] wherein the Hon'ble Tribunal has decided an identical issue and accepted that the completion certificate issued by the registered Architect is valid.



4.8. In view of the order of Ministry of Finance and decision of Hon'ble Tribunal cited above, no service tax is leviable on the amount received after completion of certificate issued by the registered Architect. Therefore, the allegation made in the show cause notice is not sustainable and the demand proposed is required to be dropped.

4.9. In the case of Suresh Kumar Bansal-2016 (43) S.T.R. 3 (Del.), the Hon'ble Delhi High Court has held that neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of Service Tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract. Thus the levy of service tax on construction of residential complex is unconstitutional and, therefore, the demand is not sustainable under law.

4.10. The adjudicating authority also failed to appreciate that the demand is hit by limitation under Section 73 of the Finance Act 1994 as the demand for the period September 2016 to June 2017 onwards has been issued only on 20.06.2020. The appellant has committed no fraud and has not suppressed any facts from the department. The appellant has furnished all the details in ST-3 return regularly and also furnished all details as and when asked by the department. The non-payment of service tax was not because of any intention to evade service tax. The appellant is of the strong belief that no service tax is payable on receipt of completion certificate from registered Architect, as explained in the provisions of Section 66E of the Act and as clarified by the Ministry vide Order No.01/2010. Therefore, appellant was of the bona fide belief that no service tax was payable and hence there is no intention to evade payment of service tax.

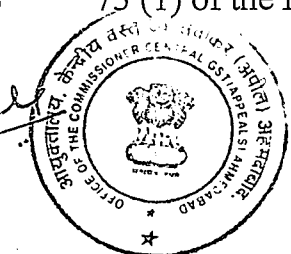
5. Personal hearing in the case was held on 09.01.2023. The appellant were represented by Shri M. H. Rawal, Consultant. He submitted a written submission during hearing and re-iterated submission made in appeal memorandum as well as in additional written submission.

6. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum and during personal hearing as well as materials available on records. The issue before me for decision is whether the impugned order issued by



the adjudicating authority, confirming the demand of Service Tax amounting to Rs. Rs. 7,76,250/- along with interest and imposing penalty, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17 and F.Y. 2017-18 (Upto June, 2017).

7. It is observed from the case records that the appellant had launched a scheme for construction of 120 residential flats named 'Shapath Height' for which they had applied for permission of construction work from the jurisdictional Kalol Nagarpalika through "RAJA CHITHI" No. 20 dated 18.05.2015. But, they failed to fulfil the Condition No. 18 of the said "RAJA CHITHI". They had also requested the Ahmedabad Urban Development Authority (AUDA) to grant them permission to develop the FP No. 309, S.R.936/1 Kalol, TP-5 (Kalol Saij-Borisana). Later on, vide their Application No. AUDA/02/2016/1761, they had applied for Building Use Permission to AUDA and fees of Rs. 87,156/- was paid through Cheque No. 001965 of HDFC Bank. The said transaction was entered in ledger account of the appellant on 28.02.2017. They had acquired Completion Project Certificate on 15.09.2016 from the Architect Interior, Director of Design Code Pvt Ltd. They had given possession to the purchasers/members before 15.09.2016. However, in case of 15 members, they had collected Rs. 1,72,00,000/- and the sale deed were executed during 16.09.2016 to 30.06.2017. Based on this Completion Certificate dated 15.09.2016, they had not paid service tax on Rs. 1,72,00,000/- received from their members of 15 flats, which were booked after 15.09.2016. It has been contended in the SCN that as the commencement letter (Rajachitti) for the construction of 'Shapath Height' had been issued by the Kalol Nagarpalika/AUDA, they are the the Competent Authority for issuance of Project Completion Certificate as well as for BU Permission as per the Explanation (1) to Section 66E(b) of the Finance Act, 1994, which clarifies that in case of non-requirement of a certificate from the competent authority, a certificate issued by either an architect or an chartered engineer or a licensed surveyor as detailed from (A) to (C) to the Explanation (I) to Section 66E(b) of the Act would be valid. Hence, the completion certificate issued by the Architect Interior was not valid. Hence, the appellant was required to discharge service tax on the amount received from 15 members after 15.09.2016. The amount of service tax on this amount was quantified at Rs. 7,76,250/- for the period F.Y. 2016-17 and F.Y. 2017-18 (Upto June, 2017), which has been demanded by invoking extended period of limitation under proviso to Section 73 (1) of the Finance Act, 1994.



8. The appellant have, on the other hand, contended that adjudicating authority has erred in not considering that the completion certificate issued by an 'architect' is also a 'competent authority' as per Section 66E(b) of the Act. The explanation to the provisions of Section 66E of the Act makes it clear that apart from Government authority or any authorized authority, registered Architect, Chartered Engineer, licensed surveyor are also an authority for issuing completion certificate. Further, on the above subject, Ministry of Finance has issued clarification vide Order No.1/2010 dated 22.06.2010, specifying competent authority to issue completion certificate under Commercial or Industrial Construction Service and Construction of Residential Complex Service. Considering the legal provisions under Section 66E (b) and the clarification issued by the Board, they are of the opinion that the Completion Certificate issued by the registered Architect in this case is valid and no service tax is payable in the matter as the consideration is received after completion of certificate by the competitive authority. Therefore, it would not be within the ambit of Service as defined under Section 65B(44) of the Act. They have also relied upon the order of Hon'ble Tribunal, Allahabad in case of M/s ABA Builders Ltd V/s Commissioner of C.EX & S.T Ghaziabad [2019 (21)GSTL 539].

9. I find that the main dispute which remains to be decided in the case is whether the Project Completion Certificate issued by the Architect Interior, Director of Design Code Pvt Ltd, on 15.09.2016 can be considered as to be issued by a "competent authority" under Section 66E (b) of the Finance Act, 1994 so as to take the amount of consideration received by the appellant after this date out of service tax net, being the consideration received after issuance of completion certificate by the competent authority.

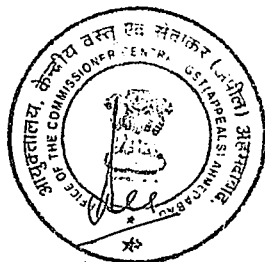
9.1. In order to examine the matter in proper perspective, the provisions contained under Section 66E (b) of the Finance Act, 1994 is reproduced below:

" The following shall constitute declared services, namely:-

...
(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.

Explanation – For the purposes of this clause,--

(I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time



being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

...”

10. In view of the legal provisions under Section 66E (b) of the Finance Act, 1994, it is apparent that the expression “competent authority” has been used in the Section to mean the Government or any authority authorized to issue completion certificate under any law for the time being in force and only in case of non-requirement of such certificate from such authority, such certificate may be obtained from any of the three category of persons enumerated in the said explanation. It is apparent from the record that the appellant had approached the Kalol Nagar Palika as well as the Ahmedabad Urban Development Authority (AUDA) for issuance of the Completion Certificate. However, it is not on record whether the completion certificate was issued by these authority. Moreover, based on the Project Completion Certificate issued by the Architect Interior, Director of Design Code Pvt Ltd, on 15.09.2016, the appellant has considered the considerations received after this date to be outside the purview of Section 66E (b) of the Finance Act, 1994. I find that there is no evidence on record to establish that the Architect Interior, Director of Design Code Pvt Ltd, was authorized under any law for issuance of completion certificate. Hence, it is held that the Certificate dated 15.09.2016 issued by the Architect Interior, Director of Design Code Pvt Ltd cannot be considered as being issued by the Competent Authority under Section 66E (b) of the Finance Act, 1994. Hence, the appellant are liable to discharge service tax on the considerations received amounting to Rs. 1,72,00,000/- from their members of 15 flats, which were booked after 15.09.2016. I find no infirmity in the impugned order passed by the adjudicating authority.

10.1 I find that the Hon’ble Tribunal, Allahabad, in the case of Pink City Properties Pvt. Limited Vs. Commissioner (Appeals) of Customs, GST and Central Excise, Lucknow 2019(27) GSTL 359 (Tri. – All.), has considered the similar matter and rejected the certificate issued by the architect. The findings of the Hon’ble Tribunal are as under:



3. The Lower Authorities have considered all the contentions of the appellant and have observed that inasmuch as the Competent Authority which is Government or any Authority authorized to issue completion certificate has not awarded any such certificate prior to the date of sale of the flat, the appellant was under legal obligation to pay service tax. He also considered the provisions of Section 66E of the Finance Act and observed that inasmuch as in terms of letter of the Mathura Vrindavan Development Authority, the completion had not taken place, the completion certificate issued by the architect cannot be treated as completion certificate required under Section 66E.

4. Learned advocate appearing for the appellant has drawn our attention to Service Tax "Removal of Difficulty" Order No. 01/2010, dated 22-6-2010 and has submitted that in terms of the said order issued in exercise of power conferred in terms of Section 95 of the Finance Act, the architect registered with the Council of Architecture constituted under Architect Act, 1972 is a Competent Authority to issue a completion certificate. However, we note that in terms of the said order the architect is also required to be authorized under any law for the time being in force, to issue of completion certificate in respect of residential or commercial or industrial complex, as a pre-condition for its occupation. As such, the architect, who issues completion certificate should be authorized, as an architect having powers to issue the said certificate.

We have examined the certificate issued by Shri Amit Sharma, on his letterhead. The said letterhead nowhere shows that the said Shri Amit Sharma has been authorized by the Competent Authority to issue the completion certificate. In fact, it is not even the assessee's case that the said Shri Amit Sharma who had issued completion certificate within 3-4 days prior to the actual sale of the flat, was even authorized and thus competent to issue the certificate. As such, we are of the view that the said certificate stands rightly rejected by the Lower Authorities.

...

6. In view of the foregoing, we find no merits in the appeal. Accordingly, the impugned orders are upheld and appeal is rejected."

11. In view of the discussions made above, I find that the impugned order passed by the adjudicating authority is legally sustainable. The appeal filed by the appellant is rejected as being devoid of any merit.

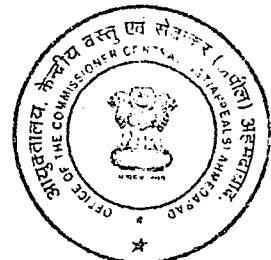
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

Akhil Kumar
7th February, 2023
(AKHILESH KUMAR)
Commissioner (Appeals)

Date: 07th February, 2023

Attested:

Somnath Chaudhary
(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.



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