



आयुक्त का कार्यालय, अपीलस(   
Office of the Commissioner,   
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय   
Central GST, Appeal Commissionerate-   
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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DIN-20201264SW000000BF42

**स्पीड पोस्ट**

क फाइल संख्या : File No : V2(ST)35/RA/A-II/2015-16 & File No : V2(ST)32/RA/NorthI/2019-20

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-037/2020-21**  
दिनांक Date : **15.12.2020** जारी करने की तारीख Date of Issue : **29.12.2020**

आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **STC/Ref-134/HCV/Green/Div-III/15-16** दिनांक: **05.02.2016**,  
passed by Assistant/Deputy Commissioner, (erstwhile Service Tax Div.-III) Central GST &  
Central Excise, Division-III, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** The Deputy Commissioner, (erstwhile Service Tax, Division-III) Ahmedabad  
Central GST & Central Excise, Division-III, Ahmedabad North,

**Respondent-** M/s Green Park Vikas Mandal, 10<sup>th</sup> Floor, Commerce House-IV, 100 Feet Road,  
Prahladnagar, Ahmedabad-380015.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे  
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 प्रकिया के दौरान हुई हो।

(ii) 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.





(क) 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।

(A) 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.

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

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

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।

(c) 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.

(1) 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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.





The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as 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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दायित्व 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.

इस 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."





**ORDER-IN-APPEAL**

The Deputy Commissioner of erstwhile Service Tax, Division-III, Ahmedabad (hereinafter referred to as the 'Department'), in pursuance of the Review Order No.35/2015-16 dated 15.03.2016 issued from F.No. STC/RRA/Ref-134/Green/Dn-III/15-16 by the Principal Commissioner of erstwhile Service Tax, Ahmedabad has filed this appeal against the Order-in-Original No. STC/Ref-134/HCV/Green/Div-III/15-16 dated 05.02.2016 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner of erstwhile Service Tax, Division-III, Ahmedabad (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Green Park Vikas Mandal, 10<sup>th</sup> Floor, Commerce House-IV, 100 Feet Road, Prahladnagar, Ahmedabad-380015 (hereinafter referred to as the "respondent").

2. The facts of the case, in brief, are that the respondent is registered with the Service Tax department under the category of "Club or Association Service" holding Service Tax Registration No. AAAAG8595RSD001. They have provided "Club or Association Service" to its members and collected deposit, charges for maintenance of society, and capital contribution for which the Service Tax payable was Rs. 17,93,114/- whereas they had paid Service Tax amount of Rs. 15,70,882/- alongwith interest of Rs. 4,72,023/-. They had also paid Rs. 20,000/- being late fees for filing late return for the period from October' 2012 to March' 2013.

2.1 The respondent subsequently filed a refund claim for an amount of Rs. 20,42,905/- (Rs. 15,70,882/- + Rs. 4,72,023/-) on the grounds that (a) they have paid by oversight Service Tax on Refundable deposits/Loans and (b) Advance maintenance collected from the members are below the prescribed limit for the Services of Club or Association in which they are registered.

2.2 The then adjudicating authority i.e. the Deputy Commissioner of Service Tax, Division-I, Ahmedabad (hereinafter referred to as the "original adjudicating authority") vide OIO No. SD-1/Refund/113/DC/Green park/14-15 dated 20.10.2014 rejected the refund claim stating that there were instances where the claimant have collected the advance maintenance beyond the prescribed limit thus their services was taxable. Also they had less paid service tax to the tune of Rs. 2,85,343/-.





2.3 Being aggrieved with the Order dated 20.10.2014 passed by the original adjudicating authority, the respondent preferred an appeal with the Commissioner, Appeal-II, erstwhile Service Tax, Ahmedabad who vide their Order-in-Appeal No. AHM-SVTAX-000-0101-15-16 dated 27.11.2015 set aside the order of the adjudicating authority on merit with consequential relief to the claimant and directed the adjudicating authority to grant the refund claim as per the terms and conditions prescribed in Section 11 B of the Central Excise Act, 1944.

2.4 The original adjudicating authority vide letter No. SD-01/04-32/refund/misc/13-14 dated 17.12.2015 transferred the file to the present adjudicating authority due to change in the jurisdiction of the respondent consequent upon restructuring of the Commissionerate.

2.5 The adjudicating authority while considering the refund claim of the respondent, restricted himself only to the verification of the terms and conditions and admissibility thereof under Section 11 B of Central Excise Act, 1944 considering the fact that the issue has already been decided on merit by the Commissioner, Appeal-II, erstwhile Service Tax, Ahmedabad vide OIA dated 27.11.2015. The adjudicating authority vide impugned order sanctioned the said refund claim amount of Rs. 20,42,905/- to the respondent. The findings of the adjudicating authority are as under:

- (i) *The respondent has made the payment Rs. 20,42,905/- on 12.03.2013 whereas the claim for refund was filed on 11.02.2014. Accordingly, the claim for refund was submitted within a period of one year from the date of payment of service tax as required in terms of the provisions of Section 11 B of Central Excise Act, 1944.*
- (ii) *In the instant case the claimant is a society (Association of Person). The society and its members are not the separate entity. They are one and the same, in view of Hon'ble High Court of Gujarat Order in the case of Sports Club of Gujarat Vs. Union of India [2013 (31) STR 645 (Guj)]. Hence the doctrine of unjust enrichment cannot be made applicable in the case giving respect to the said verdict of the Hon'ble High Court of Gujarat.*





3. Being aggrieved with the impugned order, the Department preferred the appeal on the following grounds:

- (i) The instant refund granted on the basis of Commissioner (Appeal-II) Order-in-Appeal No. AHM-SVTAX-000-0101-15-16 dtd. 27.11.2015 has been challenged by the department in the CESTAT, Ahmedabad.
- (ii) Further, the instant refund is granted on the basis of High Court decision in case of "Sports Club of Gujarat Limited, Rajpath Club Limited and Karnavati Club Limited Vs. Union of India vide SCA No. 13654/13655/13656 of 2005 wherein the Hon'ble High Court has allowed the party appeal. The said decisions of Hon'ble High Court have been challenged by the department by way of filing SLP in Hon'ble Supreme Court of India which all is connected to CA No. 7497/2012.
- (iii) The claimant is not a party to the petition before the Hon'ble High Court of Gujarat and hence the judgement is not applicable to them and they had no locus standi in this case.
- (iv) The appellate fora in the following decisions, set a parameter that where a claim for refund of any duty or tax paid arises for consideration of the authority apart from merit of the claim and even if merit it is found to be justified claim the principle of unjust enrichment have to be kept in mind before sanctioning the refund claim.
  - (a) CESTAT, Delhi in case of Punjab Alkalies and Chemicals Ltd. reported in 2001 (134) ELT 695
  - (b) CESTAT, Delhi in case of JCT Limited reported in 2004 (163) ELT 467
  - (c) CESTAT, Delhi in case of Ester Industries Limited reported in 2001 (132) ELT 234
- (v) Section 11B of Central Excise Act, 1944 was made applicable to service tax matter vide Section 83 of the Finance Act, 1944. Thus there were clear legislation and parliament spirits and intention on this behind of enactment. In the case of M/s. Oswal Agro Mills Ltd., etc. Vs. Collector or Central Excise & Others, 1993 (66) ELT 37 (SC), it was held that "the taxing statute should be interpreted and construed as per the words which the legislature has chosen to employ in the Act and that in a taxing statute there is no room for assumption or presumption." and accordingly, in the instant case the aspect of unjust enrichment will be applicable. However, the adjudicating authority has failed to consider the same in the instant case.





4. The department has contended at point no. (ii) of the grounds of appeal that the instant refund is granted on the basis of decision of Hon'ble High Court of Gujarat in case of "Sports Club of Gujarat Limited, Rajpath Club Limited and Karnavati Club Limited Vs. Union of India vide SCA No. 13654/13655/13656 of 2005 which have been challenged by the department by way of filing SLP in Hon'ble Supreme Court of India which all is connected to CA No. 7497/2012. Accordingly, in terms of the board's instructions, the said appeal was transferred to call book till the issue is finalized by the Hon'ble Supreme Court. Subsequently, Hon'ble Supreme Court vide Order dated 03.10.2019 disposed of the said appeals filed by the department and the contents thereof are re-produced below:

*"84. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form.*

*85. The appeals of the Revenue are, therefore dismissed. Writ Petition (Civil) No.321 of 2017 is allowed in terms of prayer (i) therein. Consequently, show-cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs are declared to be void and of no effect in law."*

Accordingly, the instant appeal has also been retrieved from the call book and taken up for further consideration.

5. Personal Hearing in the case was held on 23.10.2020 through video conferencing. Shri Bishan R. Shah, Chartered Accountant, appeared on behalf of the respondent. He submitted that the issue has been settled in their favour by Hon'ble Supreme Court in Calcutta Club case.

5.1 Further, the respondent in their additional submission in appeal has submitted that Green Park Vikas Mandal is registered under Co-Operative Society Act, 1961. The Society is a members' society without any shareholders and makes available facilities exclusively for its members and recoup expenses. The respondent is therefore, a mutual undertaking which does not carry on any trade or business. Hence, members and the society both are some entity.





6. I have carefully gone through the facts of the case, grounds of appeal, the oral submissions made at the time of personal hearing and additional submission given by the respondent. It is observed that the issues to be decided in this case are as below:

(i) *Whether Service Tax would be leviable on the amount collected by the respondent towards deposit, maintenance charges and capital contribution from its members in respect of services covered under the category of "Club or Association Service".*

*And if not so,*

(ii) *Whether the aspect of unjust enrichment will be applicable while considering the refund claim of the respondent in respect of the amount paid towards Service tax alongwith interest.*

6.1 As regards the issue of applicability of Service Tax, as mentioned in above point (i) I find that the Commissioner, Appeal-II, erstwhile Service Tax, Ahmedabad vide Order-in-Appeal No. AHM-SVTAX-000-0101-15-16 dated 27.11.2015 concluded that Service Tax will not be leviable in the instant case and in turn, set aside the order of the adjudicating authority on merit with consequential relief to the claimant. Further, it is also observed that the appeal filed by the department has also been dismissed by the CESTAT, Ahmedabad vide Final Order No. A/11653/2019 dated 03.09.2019, on the ground of Government litigation policy. Accordingly, the issue of applicability of Service Tax in the instant case has attained finality and hence, the contention of the department as regard to applicability of Service Tax in the instant case cannot be taken up for consideration.

Even otherwise, Hon'ble Supreme Court has also vide Order dated 03.10.2019 dismissed the appeals filed by the department against the decisions of Hon'ble High Court in case of Sports Club of Gujarat Limited, Rajpath Club Limited and Karnavati Club Limited Vs. Union of India, as mentioned in para-3(ii) above.

6.2 Now, as regards the aspect of unjust enrichment, I find that while considering the refund claim the decision of Hon'ble High Court of Gujarat in the case of Sports Club of Gujarat Vs. Union of India has been relied upon by the adjudicating authority. The judgement of the Hon'ble High Court of Gujarat is based on the 'Principles of Mutuality'. I am in agreement with the view of the adjudicating authority that the respondent





being a society (Association of Person), society and its members are not the separate entity as per the verdict of the said judgement. Accordingly, the question of unjust enrichment will arise only when there is the existence of two or more distinctly separate parties. The Hon'ble High Court proclaimed that:

*"The petitioner is giving service to its members but the club is formed on the principle of mutuality and, therefore, any transaction by the club with its member is not a transaction between two parties. However, being a company, it may enter into a transaction with anybody, a third person, not a member, then in that situation, this club becomes a legal entity and can certainly enter into any transaction and such transaction are not on the principle of mutuality and, therefore, may be liable to any tax as a transaction between two parties. However, when the club is dealing with its members, it is not a separate and distinct individual..... The Hon'ble Supreme Court, in the case of the Joint Commercial Tax Officer Vs. The Young Mens' India Association held that it is a mutuality which constitutes the club and, therefore, sale by a club to its member and its services rendered to the members, it not a sale by club to the members."*

Further I also find that Hon'ble CESTAT, Ahmedabad in case of Karnavati Club Ltd. Vs. Commissioner of Service Tax, Ahmedabad [2013 (31) STR 445 (Tri.Ahmd)] vide Final Order Nos. A/10306-10309/2013-WZB/AHD dated 29.01.2013 has held that members of the club were not separate as a client or customer and hence, Service Tax could not be imposed for the facility provided to its own members. In paragraph 11 and paragraph 12 of the said order, the Hon'ble Tribunal quotes that:

*"11.It can be seen from the above reproduced paragraphs that their Lordships have come to a categorical conclusion that the members of the club cannot be seen separately as a client or customer and the mandap or the club is one and the same. Since the Service Tax is sought from the club and it has been set aside at the show cause notice stage, by the Hon'ble High Court, it cannot be said that said club has passed on the incidence of Service Tax liability to its members, as the members are not separate from the club, is the ratio of their Lordships. If that be so, it cannot be said that by claiming the refund from self, the club itself will be unjustly enriched. Services rendered to self cannot be equated with the services rendered to a client or customer.*

*12. In my view, the appellant has passed the hurdle of unjust enrichment and I hold that the provisions of Section 12B will not be applicable in this case as the club and the members are not separate*





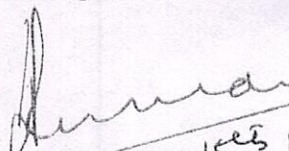
and are one as held in this case by Hon'ble High Court, the question of producing any other evidence in support of non-passing of Service Tax liability does not arise."

It is observed that the respondents are incorporated under the Co-Operative Societies Act, 1961. Hence, they are outside the purview of Service Tax law. Accordingly, I am in agreement with the view of the adjudicating authority that the doctrine of unjust enrichment cannot be made applicable in the present case.

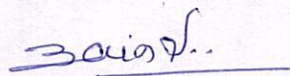
7. On careful consideration of the relevant legal provisions and the judicial pronouncements as discussed above, I find that the appeal filed by the department is not legally maintainable on merits and is liable to be rejected.

8. In view of the above, I do not find any merit in the contention of the department so as to interfere in the order issued by the adjudicating authority. Accordingly, I uphold the impugned Order-in-Original and reject the appeal by the department.

9. The appeal filed by the department stands disposed off in above terms.

  
15<sup>th</sup> December,  
(Akhilesh Kumar) 2019  
Commissioner (Appeals)

Attested



(M.P. Sisodiya)  
Superintendent (Appeals)  
Central Excise, Ahmedabad



By Regd. Post A. D

1. The Deputy Commissioner  
Division-III, Service Tax (erstwhile),  
Ahmedabad

APPELLANT

2. M/s. Green Park Vikas Mandal,  
10<sup>th</sup> Floor, Commerce House-IV,  
100 Feet Road, Prahladnagar,  
Ahmedabad

RESPONDENT



Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner CGST, Ahmedabad-South.
3. The Deputy/Asstt. Commissioner, CGST, RRA (Hq.), Ahmedabad-South with a request to forward copy to the present jurisdictional divisional authority.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Ahmedabad-South.
5. Guard file
6. PA File





