
	<b>केन्द्रीय कर आयुक्त (अपील)</b>	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,	केन्द्रीय कर शुल्क भवन,	7 <sup>th</sup> Floor, Central Excise Building,
सत्यमेव जयते	आम्बावाडी, अहमदाबाद-380015	Near Polytechnic,
	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
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क फाइल संख्या : File No : V2(ST)0156/A-III/2016-17 / 3074 to 3078  
 ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-0113-17-18  
 दिनांक Date : 26-09-2017 जारी करने की तारीख Date of Issue 21/17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/02/KM/AC/D-III/15-16 Dated 11.08.2016  
 Issued by Assistant Commr STC Div III, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

**M/s. Orchid Greens Vikas Mandal  
Ahmedabad**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
 Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of

crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39क के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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**

M/s. Orchid Green Vikas Mandal, 10<sup>th</sup> Floor, Commerce House-IV, Behind Reliance Petrol Pump, 100 Feet Road, Prahladnagar, Ahmedabad (*hereinafter referred to as 'the appellants'*) (presently operating from the corporate office of M/s. Goyal Group of Companies) have filed the present appeal against the Orders-in-Original No. STC/02/KM/AC/D-III/15-16 dated 11.08.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, is the appellant is engaged in the management and maintenance of the Green Villa residential project. They are collecting a lump-sum amount for the management and maintenance of the said residential complex under different heads namely maintenance deposit, running monthly maintenance advance and parking deposit as a contribution from members of the said society since February 2011 and for which they had neither obtained Service Tax registration nor paid Service Tax leviable thereon. Therefore after the initiation of inquiry by the Director General of Central Excise Intelligence, Zonal Unit, Ahmedabad (*hereinafter referred to as 'DGCEI'*), they were issued a SCN No DGCEI/AZU/36-156/2014-15 dated 26.09.2014 The Appellant there after obtained Service Tax Registration number AABAG1830ESD001 under the category of "Club or Association's Services". However they continue the practice of nonpayment of Service Tax. The Jurisdictional Range officer vide letter dated 11.12.2015 called the details from the appellant. The same was submitted vide letter dated 29.12.2015 in which it was revealed that the appellants, at the time of sales deed, are collecting a lump-sum amount from the prospective buyers for the management and maintenance of the residential complex. Therefore, show cause notice dated 10.02.2016 was issued to appellant for the period January 2013 to March 2013, 2013-14 & 2014-15 for nonpayment of Service Tax on collecting a lump-sum amount. The appellant submitted that in the year 2014-15 they have not collected any amount. The adjudicating authority confirmed the demand of ₹4,25,532/- under Section 73 of the Finance Act, 1994. He also ordered to pay interest under Section 75 of the Finance Act, 1994. The adjudicating authority further imposed penalties under Sections 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellant have preferred the present appeal. The appellant have submitted that the adjudicating authority has failed to appreciate the fact that Service Tax was not leviable on the amount collected by them. The appellant argued that the case is bound by the concept of mutuality as the members of the society and the appellants are one and the same person. That the transferable security.

deposit, collected by the appellants from the members, is one time deposit which is not utilized for incurring the expenditure on maintenance. Thus, the appellants prayed before me to set aside the impugned orders.

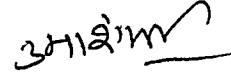
4. Personal hearing in the matter was granted on 02.06.2017, 12.06.2017 & 19.07.2017<sup>22.08.2017</sup>. However neither appellant nor its representative appeared before me. Accordingly I hereby decide the case Ex-Party considering the content of appeal memo as their submission.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum.

6. I find that the appellant have contested the case citing the principle mutuality. They stated that they and the members of the society is one and the same person. In this regard I would like to articulate the fact that principle of mutuality is applicable only in the case where the motive is not solely profit. The appellants are part and parcel of M/s. Goyal Group of Companies i.e. the builder. In general a builder looks after the maintenance of the society till he legally hands it over to the members. As long as the possession of the society is with him he would maintain it as it would be easy for him to sell residences in a well maintained society. Therefore, maintenance of the society is an integral part of his business. When the possession of the society is handed over to the members, the members form a working body for the maintenance of the society by democratically electing a core working body. The members of the said working/executive body solely comprise of the legitimate house owners of the society who willingly join the body for the welfare of the society. The said members voluntarily offer their services to the society for its betterment. This is the point where the principle of mutuality is applicable. In the present case, the builder i.e. M/s. Goyal Group of Companies collected the maintenance amount from the prospective buyers and utilizes the said amount with the sole intention to increase the sale of the residential houses. I find that the builder has collected the lump-sum amount from the prospective buyers towards "Maintenance Deposits, Running Monthly Maintenance Advance and Parking Deposit" etc. It is very clear that the parking deposit is not maintenance of the society but amount received from sale of the parking space. Further, the builder opted for Service Tax registration but failed to pay the Service Tax on the amount collected. Previously also the appellant was panelized for the same reason by the DGCEI. On being pointed out he paid the Service Tax alongwith Interest. This is enough to prove that the builder very well knew the taxability of his activities the concept of the theory of principle of mutuality seems to be an afterthought on his part and does not hold any valid ground.

7. In view of above, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
8. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED



(S/S Chowhan)  
SUPERINTENDENT (APPEAL),  
CGST, AHMEDABAD.

To,  
M/s. Orchid Green Vikas Mandal,  
10<sup>th</sup> Floor, Commerce House-IV,  
Behind Reliance Petrol Pump,  
100 Feet Road, Prahladnagar,  
Ahmedabad

Copy to:

- 1) The Chief Commissioner, CGST, Ahmedabad.
- 2) The Commissioner, CGST, Ahmedabad (South).
- 3) The Dy. /Asst. Commissioner, CGST, Division-Vastrapur, Ahmedabad.
- 4) The Asst. Commissioner (System), CGST, Ahmedabad (South).
- 5) Guard File.
- 6) P. A. File.

