

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर शुल्क अदन		
7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015		
सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)165/Ahd-II/2016-17 / 1125 to 1129
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-070-2017-18
दिनांक 31.08.2017 जारी करने की तारीख Date of Issue 28/9/17

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, Div-III, Service Tax, Ahmedabad द्वारा जारी मूल आदेश सं STC/03//KM/Div-III/15-16 दिनांक: 11/08/2016 से सृजित

Arising out of Order-in-Original No. STC/03//KM/Div-III/15-16 दिनांक: 11/08/2016 issued by Assistant Commissioner, Div-III, Service Tax, Ahmedabad

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

**M/s. Green Villa Vikas Mandal
Ahmedabad**

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

Any person a 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) केंद्रीय 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, 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 :

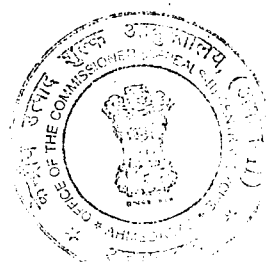
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.

(b) 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 बांहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...



(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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 हैं -

(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 बशर्त 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।

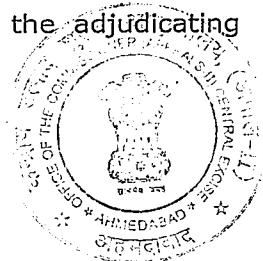


ORDER IN APPEAL

M/s. Green Villa Vikas Mandal, 10th 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 appeals against the Order-in-Original number STC/03/KM/AC/D-III/15-16 dated 11.08.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants are 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. However, after the initiation of inquiry by the Director General of Central Excise Intelligence, Zonal Unit, Ahmedabad (*hereinafter referred to as 'DGCEI'*), they had obtained Service Tax Registration number AABAG1830ESD001 under the category of "Club or Association's Services". During the course of investigation by the DGCEI, 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. After the initiation of inquiry, the appellants had obtained Service Tax registration under the category of 'Club or Association's Services'. Thereafter, a show cause notice dated 26.09.2014 was issued to them by the DGCEI for the period from February 2011 to December 2012. However, it was found that the appellants had continued with the practice of non-payment of Service Tax and therefore, details for the further period were called for. The appellants submitted the details for the further period from 2012-13 (from January 2013 to March 2013), 2013-14 and 2014-15. The issue being periodical in nature, a further show cause notice dated 10.02.2016, computing the details of the above periods, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand of ₹4,11,462/- under Section 73 of the Finance Act, 1994 and ordered for payment of interest under Section 75 of the Finance Act, 1994. The adjudicating authority further imposed penalties under Sections 76 and 77 of the Finance Act, 1994.

3. Being aggrieved with the impugned orders the appellants have preferred the present appeal. The appellants have submitted that the adjudicating

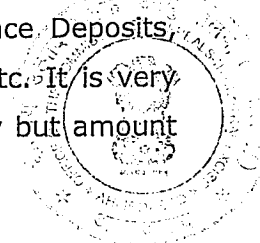


authority has failed to appreciate the fact that Service Tax was not leviable on the amounts collected by them. The appellants argued that their case is bound by the concept of mutuality as the members of the society and the appellants are one and the same person. In support of their claim, they quoted the case laws of Karnavati Club Ltd. vs. Union of India (Gujarat H.C.) and Ranchi Club (P) Ltd. vs. Chief Commissioner of Central Excise and Service Tax (Jharkhand H.C.). They further argued 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 and held on 19.07.2017. Shri Parag Shah, Chartered Accountant, appeared before me and reiterated the contents of appeal memo in terms of the concept of mutuality and requested to set aside the impugned order as SSI exemption was not allowed to the appellants.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

6. I find that the appellants have contested the case citing the principle of mutuality. They stated that they and the members of the society are one and the same person. In this regard I would like to articulate the fact that the 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, I find that after the initiation of the investigation by the DGCEI, the builder willingly opted for Service Tax registration and this is enough to prove that the builder very well knew the taxability of his activities and therefore, without any resistance he obtained the Service Tax registration and followed all the procedures prescribed in the law. 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. Further, talking about the theory of principle of mutuality, I would like to update the appellants that with effect from 01.07.2012, a new system of taxation of services has been introduced. Beside other changes, the word 'services' has also been defined under Section 65B(44) of the Finance Act, 1994. The doctrine of mutuality bears no significance in the context of taxable service provided by clubs and association as club and its members are now treated as two separate persons. In the new system, the word 'service' has been defined under Section 65B(44) of the Finance Act, 1994 which is printed as below;

"(44) 'service' means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include;

(a) an activity which constitutes merely:-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ia) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(ii) a transaction in money or actionable claim;

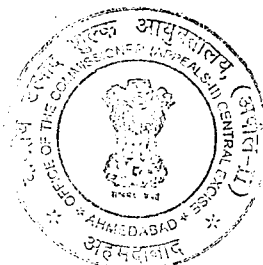
(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

© fees taken in any court or tribunal established under any law for the time being in force.

Explanation 1 for removal of doubts, it is hereby declared that nothing contained in this clause shall apply to;

A. The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

B. the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or



c. the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2— this clause, the expression "transaction in money or actionable claim" shall not include—

- i. Any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- ii. Any activity carried out, for consideration, about, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—
 - By a lottery distributor or selling agent on behalf of the State Government, about promotion, marketing, organising, selling of lottery or facilitating in the organising lottery of any kind, in any other manner, by the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998);
 - by a foreman of chit fund for conducting or organising a chit in any manner.

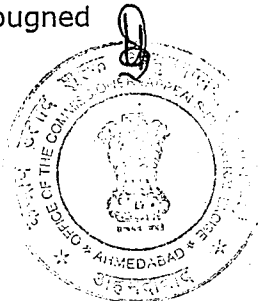
Explanation 3. – For the purpose of this chapter, -

- a. An unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- b. An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons".

In view of the above, it is quite clear that an unincorporated association or a body of persons and a member are to be treated as distinct entity. Thus, I disagree with the views of the appellants and opine that the adjudicating authority has very rightly confirmed the demand of ₹4,11,462/- along with appropriate interest and penalty.

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

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।



9. The appeals filed by the appellant stand disposed off in above terms.

U. Shankar

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

To,

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

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Dy./Asst. Commissioner, Central Tax, Division-VII (Satellite), Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax Hq, Ahmedabad (South).
- 5) Guard File.
- 6) P. A. File.

