



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलीफैक्स 07926305136



DIN: 20231264SW0000424357

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2558/2023 / १८१६ - ३०
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-189/2023-24
दिनांक Date: 30-11-2023 जारी करने की तारीख Date of Issue 04.12.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Gyan Chand Jain, Commissioner (Appeals)
- ग Arising out of OIO No. 66/CGST/Ahmd-South/JC/SR/2022-23 दिनांक: 30.12.2022 passed by The Joint Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Orchid Whitefiled Vikas Mandal,
10th Floor, Commerce House-4,
Beside Reliance Petrol Pump,
100ft. Road, Prahladnagar,
Ahmedabad-380015.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो यह 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:

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतल 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 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 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 दित्त 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 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.

- (2) 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 :-

- (क) उक्तलिखित परिच्छेद 2 (1) क 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
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 पढ़ी 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 not withstanding 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- 10 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इए लिया गलत सेनवैट क्रेडिट की राशि;
बए सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

- ☞ यह पूर्व जमा 'तंबित 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.

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 present appeal has been filed by M/s. Orchid Whitefield Vikas Mandal 10th Floor Commerce House-4, Beside Reliance Petrol Pump, 100Ft. Road, Prahladnagar, Ahmedabad-380 015 (hereinafter referred to as "*the Appellant*") against Order-in-Original No. 66/CGST/Ahmd-South/JC/SR/2022-23 dated 30.12.2022 (hereinafter referred to as "*the impugned order*") passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as "*the Adjudicating Authority*").

2. Briefly stated, the Appellant were engaged in the Management & Maintenance of the "Orchid Whitefield" residential Project. They were collecting a lump sum amount for Management and Maintenance of the said residential complex under different heads namely "Maintenance Deposit", "Running Monthly Maintenance Advance" & "Parking Deposit" etc. as a contribution since January, 2012 for which they had neither obtained Service Tax registration nor paid Service Tax leviable thereon. However, after initiation of inquiry by the Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad (hereinafter referred as 'DGCEI for the sake of brevity), they obtained Service Tax Registration bearing no. AAAJO0213DSD001 under the category of "Club or Association's Services" from Service Tax Commissionerate, Ahmedabad, on 11/03/2013. Intelligence gathered by the officers of the DGCEI indicated that M/s. Goyal Group of Companies, 10th Floor, Commerce House-4, Beside Reliance Petrol Pump, 100Ft. Road, Prahladnagar, Ahmedabad-380015, a Real Estate Builder and Developer, were engaged in providing of "Construction of Residential Complex Service" & "Industrial & Commercial Construction Service" and they formed various Co-Operative Service Societies for management & maintenance of the Residential/ Commercial Complexes. At the time of sale and registration of respective unit,



respective society collected a lump sum amount for management and maintenance of said Complexes under different heads namely "Maintenance Deposit", "Monthly Maintenance Advance", "Parking Deposit", etc. as a contribution. The said Service Society is liable to pay Service Tax on a lump sum amounts collected for Management and Maintenance of the said Residential Complex, as a contribution under aforesaid heads, under the category of "Club or Association's Services, as specified in sub-clause (zzze) of clause (105) of Section 65 of the Finance Act, 1994. Show Cause Notice F.No. DGCEI/AZU/36/163/2014-15 dated 30.09.2014 was issued by the Joint Director, DGCEI Ahmedbad for the period January 2012 to December 2012.

3. However, the Said service society has continued the practice of Non-payment of Service Tax, therefore details for the further period were called for by the jurisdictional Range Officer. As per the details submitted by the appellant for the period 2012-12(January 2013 to March 2013), for the period period 2013-14 & 2014-15(Up to Marach 2015), The appellant were issued Show Cause Notice issued vide F.No. STC/4-22/O&A/2016-17 dated 06.04.2017 proposing:

- (i) Demand and recovery of Service Tax amounting to Rs. 54,91,880/-(including Education Cess and SHES) not paid/short paid for the period January 2013 to March 2015, under Section 73(1) of the finance Act, 1994.
- (ii) Demand and recovery of interest as applicable on the amount of S Tax Liability of Rs. 54,91,880/-
- (iii) Demand and recovery of Penalty Under section 76 of the Finance Act, 1994,
- (iv) Demand and recovery of Penalty Under section 77 of the Finance Act, 1994,



4. The Show Cause Notice was adjudicated, vide the impugned order dated 30-12-2022 confirming:

(i) The demand and recovery of Service tax amounting to Rs. 54,91,880/- (Rupees Fifty Four Lakhs Ninety One Thousand Eight Hundred and Eighty only) including cess), leviable on taxable value of Rs. 4,44,32,684/- of the taxable service provided during the period from January, 2013 to March, 2015 under the proviso to Section 73(2) of the Finance Act, 1994;.

(ii) The Demand & recovery of Interest at the applicable rate under section 75 of the Finance Act, 1994 in respect of confirmed demand at (i) above;

(iii) The penalty of Rs.5,49,188/- (Rupees Five Lakhs Forty Nine Thousand One Hundred and Eighty Eight only) under the provisions of section 76(1) of the Finance Act, 1994 in respect of (i) above. However, in view of clause (il) of the second proviso to Section 76(1), if the amount of Service Tax confirmed and interest thereon is paid within a period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

(iv) The penalty of Rs.10,000/- (Rupees Ten Thousand Only) under Section 77(2) of the Finance Act, 1994 for failure to correctly self-assess the tax dues on the services provided by them and for not filing proper ST-3 returns. The demand and recovery of equivalent penalty of Rs. 20,42,920/- under the proviso of 78(1) of the Act.



5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- That on the facts and in the circumstances of the case and without prejudice to any other grounds taken herein, the OIO passed by the Ld. Adjudicating Authority, is liable to be set aside as it is contrary to the facts on record as well as the settled position of law and has been passed without considering the statutory provisions and without application of mind and is ex-facie illegal, without jurisdiction and has been passed with mala-fide intentions to harass the assessee.
- That on the facts and in the circumstances of the case and without prejudice to any other grounds taken herein, the OIO has been passed on the basis of assumptions, presumptions, conjectures and surmises and without proper consideration of facts, records and submissions made before the Ld. Adjudicating Authority at the time of personal hearing and hence, is liable to be set aside.
- That on the facts and in the circumstances of the case and without prejudice to any other grounds taken herein, the OIO confirming demand of Service Tax, interest and penalties under various provisions of the Finance Act, 1994, is illegal, unjustified and bad in law and hence needs to be summarily quashed to meet the ends of justice.
- That the impugned SCN issued without pre-consultation - pre-SCN consultation is mandatory in all cases where the demand of duty/tax is above Rs. 50 Lakhs
- That the principal SCN as well as the impugned SCN issued under Section 73(1A) failed to quantify the correct taxable amount, as it is settled position of law that Service Tax was not leviable on Deposits,



- That the Adjudicating Authority has outrightly ignored the submissions made by the Appellant, and even disregarded the documentary evidence submitted by the Appellant. The Adjudicating Authority had passed an Order which runs into twenty-six (26) pages, where in the definitions of the term "service", "taxable services", "Service Tax category of "Club and Association service", Negative list etc are discussed in a detailed manner, to substantiate that the activity carried on by the Appellant was a taxable activity, which were not the matter of dispute. The Appellant had claimed that it was exempt under Notification, which itself is evident that it had not disputed the classification or taxability of services.
- The Adjudicating Authority mentioned in para 28 of the impugned OIO that the Appellant had failed to prove as to whether the Appellant is an unincorporated body or non-profit entity registered under any law. These allegations were not made in the SCN.
- That without prejudice, the Appellant refers its ST-1 (i.e., the Service Tax registration application), the acknowledgement issued towards acceptance of ST-1 along with copy of document of constitution of the applicant, and ST-2 issued by the Service Tax department, after acceptance of the ST-1 and the said constitution documents then submitted by the Appellant, as per which the Service Tax department had accepted the status of the Appellant under the category "Society/ Cooperative Society" on 11.03.2013, and that neither the SCN, nor the OIO alleges that the Appellant had submitted incorrect information at the time of taking Service Tax registration. Copies of ST-1, acknowledgement, and ST-2 are enclosed at page no. 91 to 95 and marked as Annexure-o.
- That the SCN was issued after conducting Search on the premises of the Developer, when Shri Mukesh Agarwal, the Authorised person of the Developer had given statement on



wherein it is clearly mentioned that inter alia the Appellant is one of the Society/ Vikas Mandal, and there for it is ridiculous on part of the Adjudicating authority to hold that the fact that the Appellant is a Housing Society, is a matter of doubt.

- That it is a matter of concern that the Appellant authority did not clarify these basis details during the Personal Hearings, and which were already available with the Service Tax department, and this clearly implies that the Adjudicating authority had passed the OIO out of preconceived notion to confirm the demand, and without application of mind.
- That the Adjudicating Authority has justified the stand nowhere in the impugned OIO that as to why the Appellant was not entitled for the exemption under Notification No. 25/2012 (supra), and rather on reading the entire Order it clearly appears that the Adjudicating authority had simply copied pasted the earlier Order in this case also, as various sections of this Order are irrelevant, like para 36 of the impugned OIO, which is completely out of the context. Therefore, it is abundantly clear that the Adjudicating Authority had simple copied the earlier Order and issued the impugned OIO, which fails to provide natural justice and liable to be quashed.
- That the Exemption entry does not restrict the collection of Running Maintenance charges in advance for a future period, or for a longer period
- That, without prejudice, reference is made to the relevant Entry No. 28 of the Exemption Notification No. 25/2012-ST dated 20.06.2012, which provides exemption from payment of Service Tax on the Running Maintenance charges upto Rupees Five Thousand per month per member,
 - *without any condition that the Running Maintenance charges cannot be collected in advance for any future period;*
 - *and most importantly*



- *without any condition that the Running Maintenance charges cannot be collected together for longer period, which in total exceeds the limit of Rupees Five Thousand per month, as long as the monthly amount remains below the said limit of Rupees Five Thousand per month;*
- The Entry No. 28 (supra) is reproduced hereunder:

28. Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

Therefore, the impugned OIO is baseless, illegal and issued without application of mind, and liable to be set aside.

- The Adjudicating authority held that one receipt is not enough to prove that all amount were within limit of Rupees Five thousand
- It is settled position under the law that Order cannot travel beyond allegations raised in Show Cause Notice,
- The Adjudicating Authority mentioned in para 29 of the impugned OIO that the Appellant had failed to prove that it is an unincorporated body or non-profit entity registered under any law. These allegations were not made in the principal SCN. The Adjudicating Authority further mentioned in same para that there is no sufficient evidence to prove that whole of the receipts is utilized for sourcing of goods or services from a



third person for the common use of its members in a housing society or a residential complex.

- The SCN was issued on the premise of lumpsum collection of Maintenance charges and the above points were neither in dispute nor escalated in the principal SCN. The impugned SCN is issued under Section 73(1A) of the Finance Act, 1994, and therefore, what was not in the principal SCN cannot be said to exist in the subsequently issued impugned SCN, and to this extent the impugned OIO travels beyond the Show Cause Notice and liable to be quashed on the grounds of illegality,
- Without prejudice, the Adjudicating Authority was at liberty to ask the Appellant to prove that the amount was spend for common use of the members (i.e., the flat owners) during the Personal Hearings, however, the Adjudicating Authority found it better to use its power to pen down the demand, instead of resolving the matter with a pre-consultation approach,
- No effective opportunity of being heard - The Adjudicating Authority neither consider the information already available with the Service Tax department, not taken any effort to communicate its dissatisfaction to the Appellant for clarifying the doubts, and rushed to a judgment in a hasty manner,
- The Show Cause Notice is time-barred - the information relied on by the Adjudication Authority is already on public domain - the Appellant has provided all the required information & documents and always been cooperative during the investigation and adjudicating process,
- Extended period cannot be invoked - the issue pertains to interpretation of law,
- Extended period cannot be invoked - the impugned SCN Being issued under Section



- No question of Interest where the demand itself is incorrect
- No question of imposition of Penalty where the demand itself is incorrect
- Penalty cannot be imposed - the issue pertains to interpretation of law
- Without prejudice, it is a settled principle of law that issues arising out of interpretation of law, cannot be held to have been done with the intent of fraud, or wilful misrepresentation, or for suppressing facts, or with the intent to evade payment of tax, and, penalty cannot be imposed without mens rea.
- Without prejudice to the above, it is most humbly submitted that the issue is wholly interpretational, where the Adjudicating authority has taken a view that exemption notification may not be available when the Running Monthly Maintenance charges are collected for a longer period, whereas there is no such restriction in the notification, and the amount actually collected by the Appellant is much less than the limit prescribed in the exemption notification. Therefore, the entire matter pertaining to classification of services provided by the Appellant is wholly interpretational.
- The impugned SCN and the impugned OIO are non-speaking in nature and hence is liable to be quashed,
- The Appellant have submitted sample receipt of the respective flats which is as under:

TABLE

Sr. No.	Flat No.	Sq. Ft.	Maintenance Charge @ Rs. Per Sq. Ft. for 24 months	Maintenance Deposit	Parking Deposit	Total amount	Receipt no.	Receipt date
1	G-71	1070	51,360	30,000	-	81,360	295	12/17/2012
2	M-53	1080	51,840	-	-	51,840	369	10/17/2013
			-	30,000	-	30,000	367	10/17/2013



3	G-82	1080	51,840	-	-	51,840	33	9/19/2012
			-	30,000	-	30,000	32	9/19/2012
4	N-53	1070	51,360	-	-	51,360	375	10/21/2013
			-	30,000	-	30,000	378	10/21/2013
5	B-62	1705	81,840	40,000	-	121,840	302	12/17/2012
6	E-64	1070	51,360	-	-	51,360	438	11/21/2013
			-	30,000	-	30,000	439	11/21/2013
7	D-31	1080	25,920	-	-	25,920	829	3/29/2013
			25,920	-	-	25,920	979	3/29/2013
			-	15,000	-	15,000	978	3/29/2013
			-	15,000	-	15,000	977	3/29/2013
8	A-114	1742	83,616	-	-	83,616	774	2/22/2013
			-	40,000	-	40,000	775	2/22/2013
			-	-	1,000	1,000	135	9/15/2012
9	B-52	1705	81,840	-	-	81,840	152	10/15/2012
			-	40,000	-	40,000	151	10/15/2012
10	C-94	1752	84,096	-	-	84,096	13	9/13/2012
			-	40,000	-	40,000	14	9/13/2012
			-	-	1,000	1,000	19	9/13/2012

6. Personal hearing in the case was held on 26-10-2023. Shri Vikash Agarwal, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated the contents of the written submission made by them and requested to allow their appeal.

6.1 Further they have submitted in additional submission dated 06th November, 2023 vide which they have forwarded copy of OIA No. AHM-EXCUS-002-APP-037/2020-21 dated 29.12.2020 wherein, in the case of the Deputy Commissioner, Division-III, Service Tax, Ahmedabad Vs. Green park Vikas Mandal, the Commissioner (Appeals) Ahmedabad had decided an identical matter in favour of the respondent in that case i.e. Green park Vikas Mandal. In the said case, the appellant authority had placed reliance on Order-in-Appeal No. AHM-SVTAX—000-0101-15-16 dated 27.11.2013 and the decision of the Hon'ble Supreme Court in the case of State of West Bengal Vs. Calcutta Club Ltd. They have submitted building usage permission dated 14.12.2012.



7. I have carefully gone through the facts of the case and submission made in the Appeal Memorandum, the submission made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 54,91,880/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period January' 2013 to March' 2015.

8. The Appellant submitted list showing details of flats i.e. size of each flat in square feet, Running Monthly Maintenance charge calculated at Rs. 2 per square feet, the period for which Running Monthly Maintenance charge is to be collected in advance, and the amount collected is re-produced along with samples receipts issued by the Appellant to the flat-owner member for collection of Running Monthly Maintenance charges advance, Maintenance Deposit, and Parking Deposit separately.

9. I have gone through the above shown table, which shows that the appellant have collected Maintenance charges advance for 24 months at the rate of Rs. 2 per square foot from each and every residents owing flat of the society. I read 8/2007 dated 01.03.2007 for the period upto June, 2012 and the relevant part of the Entry No. 28 of the Notification No. 25/2012 dated 20.06.2012 which is as under:

Notification No. 8/2007-Service Tax dated 01st March, 2007

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services, specified in sub-clause (zzze) of clause (105) of section 65 of the said Finance Act, provided or to be provided, by a resident welfare association where the sole criterion for its membership is the residential status of a person in a residential



complex or locality, to its members, from the whole of the service tax leviable thereon under section 66 of the said Finance Act, subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month.

Notification No. 25/2012-Service Tax dated 20th June, 2012

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994..... the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely: -

28. *Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -*

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax;

(c) or up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

10 From the above provision, it is observed the Appellant are engaged in collecting monthly maintenance advance collected for 2 years from each member of the residential society. From the Table above it appears that the appellant collected maintenance charges on monthly basis at the rate of Rs. 2 per square feet. It appears that the collection in the head of running maintenance charge in advance is exempted under Notification No. 8/2007-ST dated 01st March, 2007 till June 2012 and from July 2012 under Entry No. 28 of the Notification No. 25/2012-ST dated 20.06.2012. However as per para 29 of the impugned order it is noticed that the Appellant have produced only a copy of some receipts issued pertaining to maintenance charges and failed to submit anything to prove their



claim that the amount of maintenance charges collected from the residents were below the threshold limit as per the Notification No. 25/2012-ST dated 20.06.2012. Now, they have submitted some more documents. However, the documents and records need detailed verification. Therefore the matter needs to be remanded back.

11. From the table shown hereinabove at the para no. 5, the Appellant had also collected parking deposit and maintenance deposits. The Appellant has claimed that housing societies collect deposits from the members as a measure of financial security to protect the housing society from lack of liquidity in case of failure on part of any flat member/flat owner in paying the regular dues, in the common interest of all members of that Housing Society. It is settled position under the law that service tax is not leviable on the deposits and in this case Maintenance deposits, Parking deposits or Terrace deposits collected by the Appellant is not taxable. In support of this the Appellant submitted following cases laws:

- SAYA BUILDCON CONSORTIUM PVT. LTD. Vs COMMR. OF C. EX. & S.T., NOIDA 2019 (20) G.S.T.L. 361 (Tri. - All.)

Construction of Residential Complex service - Amount of security deposit received by builder from flat owners - Taxability of - Such amount having been received as a pure agent/trustee of flat owners and transferred to flat owners' association after handing over flats, not leviable to Service Tax - Sections 65(30a) and 65(105)(zzzh) of Finance Act, 1994.

- PARAMOUNT FACILITIES & SERVICES PVT. LTD. Vs. COMMR. OF C. EX. & S.T., GHAZIABAD 2019 (27) G.S.T.L. 251 (Tri. - All.)

Maintenance and Repair service - Amount collected by builder from flat owners for providing them Maintenance and Repair service of residential complex by service provider under a tripartite agreement between him, said service provider and flat owners - Such amount, till it paid to service provider when flat owners failed to pay him for services provided, reflected in builder's books of account as interest free security deposit and in his books of account as receivable - Such receivable amount till it received



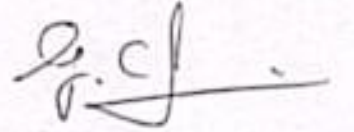
cannot be treated as consideration for providing services and not liable to Service Tax particularly when it is not receivable on account of any invoice - Sections 65(64) and 65 (105)(zzg) of Finance Act, 1994.

In view of the above judgments it appears that the Maintenance deposits, Parking deposits or Terrace deposits collected by the Appellant is not taxable.

12. In view of the above discussion and finding I remand back the matter to the adjudicating authority for detailed verification and decide the matter afresh.

13. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

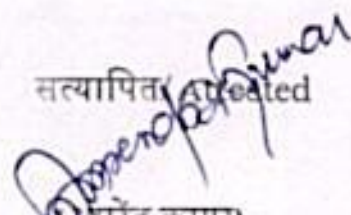
The appeal filed by the appellant stands disposed of in above terms.



ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 30.11.2023



सत्यापित / Attested

अनंद कुमार
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,
 M/s. Orchid Whietfiled Vikas Mandal,
 10th Floor Commerce House-4,
 Beside Reliance Petrol Pump,
 100Ft. Road, Prahladnagar,
 Ahmedabad-380 015.

Appellant

The Joint Commissioner,
 Central GST, Ahmedabad South,

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2. The Commissioner, CGST, Ahmedabad South
3. The Joint Commissioner, Central GST, Ahmedabad South.
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South
5. (for uploading the OIA)
6. Guard File
7. PA file

