



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

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



DIN: 20231264SW000000D87B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2566/2023 18441-65
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-192/2023-24
दिनांक Date: 31-10-2023 जारी करने की तारीख Date of Issue 05.12.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Gyan Chand Jain, Commissioner (Appeals)
- ग Arising out of OIO No. 65/CGST/Ahmd-South/ADC/TGR/2022-23 दिनांक: 30.12.2022 passed by
The Additional Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम व पता Name & Address

Appellant
M/s. Orchid Whietfiled 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 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) 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 हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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 मामले 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 हो रागव पर या बाद में विलत 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 इका 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 परिषद 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 notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय 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 ₹.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.

- 1^o 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;
- इ^o लिया गलत सेनवैट क्रेडिट की राशि;
- ब^o सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

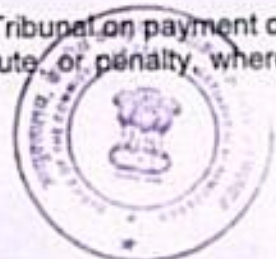
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

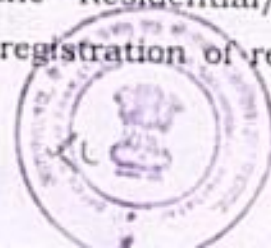
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



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. 65/CGST/Ahmd-South/ADC/TGR/2022-23 dated 30.12.2022 (hereinafter referred to as "*the impugned order*") passed by the Additional 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,



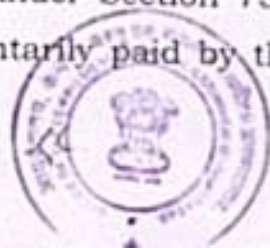
respective society collected a lump sum amount for management and maintenance of said Complexes under different heads namely "Maintenance Deposit", "Monthly Maintenance Advance", "Parking Deposit", etc. as a contribution. The said Service Society is liable to pay Service Tax on a lump sum amounts collected 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. Acting on the aforesaid intelligence, a team of officers of the DGCEI, Zonal Unit, Ahmadabad, have conducted a search at the Corporate office of M/s. Goyal Group of Companies, 10th Floor, Commerce House-4, Beside Reliance Petrol Pump, 100Ft. Road, Prahladnagar, Ahmedabad-380015 on 28.02.2013 and resumed documents/information relating to said Vikas Mandal under regular Panchnama dated 28.02.2013. On scrutiny of the said documents/ details/ information, it revealed that they have constructed/ formed a Co-Operative Service Society in the name of "Orchid Whitefield Vikas Mandal", for management & maintenance of the "Orchid Whitefield" residential project and they have collected a lump sum amount for management and maintenance of said residential complex under different heads namely "Maintenance Deposit" & "Monthly Maintenance Advance" etc., as a contribution. It further appears that the Service Society is liable to pay Service Tax on a lump sum amounts collected for provision of taxable service i.e. for management and maintenance of the said residential complex under aforesaid heads, as a contribution, 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, however till initiation of inquiry by DGCEI, the Service Society had neither obtained Service Tax registration nor paid any amount of Service Tax leviable on said receipts. During the course of search on spot statement of Shri Mukesh Agarwal, Authorized Person of the service society was recorded under Section



14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 on 28.02.2013 wherein he inter alia state that any of Goyal Group of Companies did not collect any amount from their prospective buyers/members towards maintenance, parking & membership fees etc. , however these charges were being collected by the Society/Vikas Mandal formed for maintenance & management of the Residential & Commercial Project & Residential Plots completed/sold by Goyal Group of Companies. He admitted that he had collected a lump sum amount to the tune of totally Rs. 1,65,28,480/- towards "Maintenance Deposit", "Running Monthly Maintenance Advance", & "Parking Deposits" in the name of the Appellant and they are liable to pay Service Tax to the tune of Rs. 20,42,920/- during the period from January 2012 to December 2012. After initiation of Inquiry by the DGCEI, the appellant obtained Service Tax Registration No. AAAJO0213DSD001 under the category of "Club or Association's Service" on 11/03/2013 and voluntarily deposited an amount of Service Tax liability to the tune of Rs. 20,42,920/- and interest of Rs. 1,14,256/- for delay in discharging Service Tax liability.

3. Subsequently, the Appellant were issued a Show Cause Notice No. DGCEI/AZU/36-163/2014-15 dated 30.09.2014 proposing:

(i) Demand and recovery of Service Tax amounting to Rs. 20,42,920/- leviable on taxable value of Rs. 1,65,28,480 of the taxable service viz. "Club or Association's Service" provided during the period January, 2012 to December, 2012, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 (hereinafter referred as "the Act") by invoking extended period of five years as provided of five years as provided under 1st proviso to subsection (1) of Section 73 ibid with an interest at appropriate rate for delayed payment of Service Tax liability under Section 75 of the Act. The amount of Rs. 20,42,920/- voluntarily paid by the appellant was



proposed to be appropriated against the service tax liability. The interest amounting to Rs. 1,14,256/- on account of delayed payment of service tax liability was also paid by the Appellant was proposed to be appropriated

(ii) Demand and recovery of Penalty for suppressing the value of "Club or Association's Services" provided by the Appellant during the impugned period under the provision of Section 78 of the Act.

(iii) Demand and Recovery of Penalty for failure to make an application for obtaining Service Tax Registration under the category of "Club or Association's Service", till 31/03/2013 even though taxable service was provided by them since January' 2012 under the provision of Section 77 of the Act.

(iv) Demand and Recovery of Penalty for failure to furnish prescribed periodical ST-3 Returns for the period from January' 2012 to June' 2012 and October' 2012 to December' 2012 within stipulated period and for failure to furnish taxable value of the aforesaid taxable service under the provisions of 77 of the Act,

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

(i) The demand and recovery of Service Tax amounting to Rs. 20,42,920/- was confirmed for the period during January' 2012 to December' 2012 under the provision of Section 73(1) of the Act. The said amount paid by the appellant was ordered to be appropriated against the demand of Service Tax. The demand and recovery of Interest at the applicable rate under Section 75 of the Act in respect of confirmed demand. The amount of Rs. 1,14,256/- paid was ordered to be appropriated against the demand of interest.



(ii) The demand and recovery of equivalent penalty of Rs. 20,42,920/- under the proviso of 78(1) of the Act.

(iii) The demand and recovery of Penalty of Rs. 10,000/- under Section 77(1) of the Act for failure to apply for Service Tax Registration within time stipulated under Section 69 of the Act read with Rule 4 of Service Tax Rules, 1994.

(iv) The demand and recovery of Penalty of Rs. 10,000/- under Section 77(2) of the Act for failure to correctly assess the tax dues on the service provided by them and for not filing ST-3 Returns.

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:

- The Appellant was formed in the year 2012 as a Service Society, by M/s Goyal Group of Companies to take care of Society maintenance and allied work of the Residential Project named ORCHID WHITEFIELD constructed and developed by M/s Goyal Group of Companies. Initially the Appellant was functioning from the office of the Developer i.e. M/s Goyal Group of Companies, till the time they had given charge of Society maintenance work to the residents of the Orchid Whitefield Society. The Appellant was collecting Maintenance Deposit, Parking Deposit, Terrace Deposit and Running Maintenance charges from the owners who had purchased flats at the Orchid Whitefield Society. Monthly maintenance advance had been collected in lump sum for a period of time from each member . The Appellant mentioned that the advance was collected as monthly maintenance. The Collection in the head of monthly maintenance advance was made on lump sum basis for a particular period and not charging on lump sum basis. It is settled position of law that collection of Deposit is



not taxable under the Finance Act, 1994, and Service Tax was not payable on Deposits. Further, the Running Maintenance charges collected by the Appellant was also exempted from payment of Service Tax vide Notification No. 8/2007-ST dated 01.03.2007 for the period upto June 2012, and vide Entry No. 28 of the Notification No. 25/2012-ST dated 20.06,2012 for the period from 1st July, 2012 to 31st December, 2012, as the Notification stood valid as on 31st December 2012. Thus, the Appellant was not providing any taxable service during the period of dispute and was neither liable for making payment of Service Tax, nor for obtaining Service Tax registration. Accordingly, the Appellant had not taken Service Tax registration. The relevant part of aforementioned notifications is reproduced hereunder:

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;

- The Appellant submitted a list showing flat number, 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.

- The Appellant denied the allegations made in the impugned SCN and mentioned that the demand of Service Tax, Interest and Penalties are illegal, ultra-vires and unsustainable, and that the Running Maintenance charges collected by the Appellant were below threshold provided under Notification No. 8/2007-ST dated 01.03.2007 for the period upto June' 2012, and vide Entry No. 28 of the Notification No. 25/2012-ST dated 20.06.2012 for the period from 1st July 2012 to 31st December 2012, and therefore, exempted from payment of Service Tax.
- The Appellant further submitted that the demand raised by the investigating authority based on the statement of Shri Mukesh Agarwal was not sustainable as Shri Mukesh Agarwal was the Authorised person of the Developer i.e. Goyal Group of Companies and not the Appellant.
- The Appellant further submitted that the investigating authority had wrongly invoked the extended period of limitation and requested to drop the proceedings and vacate the order.
- In the Personal Hearing held on 12.10.2022 the representative on behalf of the appellant submitted that it is an unincorporated body and therefore, doctrine of mutuality is applicable and for that reason also the amount received from



its members (i.e. the flat buyers) cannot be treated as consideration.

- Show Cause Notice is invalid as Section 65 of the Act ceases to apply with effect from 01.07.2012 and the same was defunct during the impugned period.
- The SCN failed to quantify the correct taxable amount as it is settled position of law that Service Tax was not leviable on Deposits.
- The OIO is not speaking order-The Adjudicating Authority has passed the OIO out rightly ignoring the submission made by the Appellant, out of preceveived belief and notion to confirm the demand.
- The Exemption Entry does not restrict the collecitn of Running Maintenance Charges in Advance for a future period, or for a longer period.
- The Show Cause Notice is time-barred as the information relied on by the Adjudication Authority is already on public domain.
- Extended period cannot be invoked as the issue pertains to interpretation of law.
- As the demand itself is wrong in law and liable to be dropped there arises no question of payment of interest and Penalty.
- The Appellant have submitted sample receipt of the respective flats which is as under:



TABLE -1

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

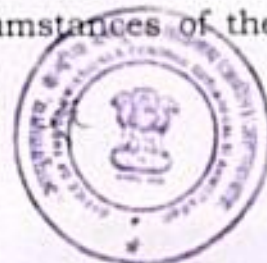
6. Personal hearing in the case was held on 08-09-2023. Shri Vikash Agarwal, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated the submissions made in appeal memorandum. He submitted that the officers of DGCEI have made a case for demand of service tax on the presumption that the amounts collected by the appellant were lump sum maintenance charges collected from the members of the society. The appellant has submitted that the amount collected was not lump sum maintenance charge but advance maintenance for 24 months. Since, the per month maintenance charge in each case was less than Rs.5000, the same is exempted from service tax vide serial number 28 of the notification, 25/2012-ST. Apart from advance



maintenance charges, the society had also collected the deposits in the form of maintenance deposit, parking deposit and terrace deposit. The same being deposits are not subject to service tax. The adjudicating authority has not accepted the contentions of the appellant, merely on the ground that the appellant had produced only sample invoice, which was not sufficient to prove their case. The appellant with appeal has now submitted sample receipts of all the four categories along with ledger in respect of each and every flat. In view of the same he requested to consider their case and set aside the impugned order.

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 (BU) permission dated 14.12.2012. The BU permission is received after the issuance of the Notification No. 25/2012-ST dated 20.06.2012.

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. 20,42,920/- 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' 2012 to December' 2012.

8. The Appellant submitted list showing details of all 630 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 carefully 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. It is also evident from the submitted invoices issued in the name of residents of the Flats. I have carefully gone through each and every sample invoices submitted by the Appellant and found that in some of the invoice issued to respective flats, Running monthly maintenance charge along with maintenance deposits for 2 years were issued and some of the invoices issued to respective flats were issued to collect only monthly maintenance charge for 2 years and also some invoices were issued to charge parking deposit exclusively. 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 proviso it is observed the Appellant is engaged in collecting monthly maintenance advance collected for 2 years from each member of the residential society. From the Table-1 above shown it is abundantly clear that the appellant collected maintenance charges on monthly basis at the rate of Rs. 2 per square feet. I find 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. I find that as per Notification No. 08/2007-ST dated



01st March, 2007 the services provided are exempt upto Rs. 3000/- per member per month. I find that the society is charging the amount of Rs. 2 per square feet as maintenance charges. I further find that in some flats the areas is 1752, 1705, 1742 sq. ft. etc. In such case the monthly maintenance will be exceeding Rs. 3000/-. The Appellant have claimed that the receipt of the amount charged is after the issuance of Notification No. 25/2012-ST dated 20.06.2012 wherein the exemption limit is increased to Rs. 5000/-. However the SCN covers the period January' 2012 to December' 2012. So in the period between January' 2012 to June' 2012 some amount may be taxable exceeding Rs. 3000/- per month. This aspect needs verification hence the matter needs to be remanded back to the adjudicating authority.

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. Accordingly, in view of the foregoing discussions and finding, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and remanded the matter back to the adjudicating authority for examining 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.

जानचंद जैन
आयुक्त (अपील्स)

Date : 31.10.2023

Attest

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

