

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)193-194-195 /A-II/2015-16 / 3286-90  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-154-155-156-16-17  
दिनांक Date : 25.11.2016 जारी करने की तारीख Date of Issue 05/12/16  
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित  
Arising out of Order-in-Original No STC/01-02-03/HCV/DC/Div-III/15-16 Dated 28.01.2016  
Issued by Assistant Commissioner, Div-III, Service Tax, Ahmedabad

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

**M/s. Orchid Green Vikas Mandal Ahmedabad & Green Country(Sanathal) Co-Op  
Housing Society Ltd Ahmedabad & Green Villa 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 :-

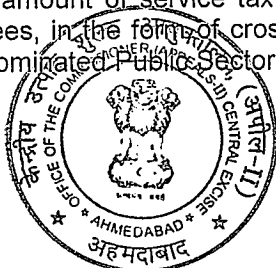
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल  
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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम  
है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना  
रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की  
मांग ओर 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 accompanied 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.



*A. Jile*

:: 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 रुपए 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 अर्जी एवं अपील को लागू नहीं होंगे।

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 appeals against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Deputy Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

Sr. No.	OIO No.	OIO date	Amount of demand confirmed (₹)	Period involved
1	STC-01/HCV/DC/D-III/15-16	28.01.2016	2,38,976	Feb'2011 to Dec'2012
2	STC-02/HCV/DC/D-III/15-16	28.01.2016	3,61,066	Feb'2011 to Dec'2012
3	STC-03/HCV/DC/D-III/15-16	28.01.2016	2,90,278	Mar'2012 to Dec'2013

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 and voluntarily deposited the above mentioned amounts along with interest and filed periodical ST-3 returns for the periods July'12 to September'12, October'12 to March'13, April'13 to September'13 and October'13 to March'14. Therefore, show cause notices dated 29.09.2014 and 26.09.2014 respectively were issued to them by the DGCEI which were adjudicated vide the above mentioned impugned orders by the adjudicating authority. The adjudicating authority confirmed demand of ₹ 2,38,976/-, ₹ 3,61,066/- and ₹ 2,90,278/- respectively under Section 73 of the Finance Act, 1994 and ordered for appropriation of the said amounts paid by the appellants, against the said demand. He also ordered



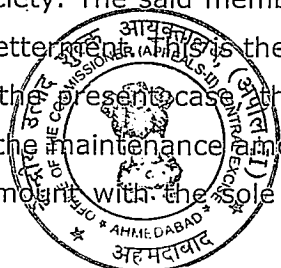
to pay interest under Section 75 of the Finance Act, 1994 and ordered for appropriation of the interest amounts paid by them against their interest liability. The adjudicating authority further imposed penalties under Sections 77 and 78 of the Finance Act, 1994. He further ordered to recover late fee as provided under Rule 7© of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 for non filing of St-3 returns.

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 there 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 and held on 16.11.2016. 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.

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 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 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

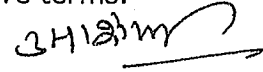


sale of the residential houses. I find that the builder has collected the lump-sum amount from the prospective buyers towards "Maintenance Deposits, Running Monthly Maintenance Advance and Parking Deposit" etc. It is very clear that the parking deposit is not maintenance of the society but amount received from sale of the parking space. Further, I find that after the initiation of the investigation by the DGCEI, the builder opted for Service Tax registration and willingly deposited the Service Tax on the amount collected along with interest. He also started to file ST-3 returns periodically. This is enough to prove that the builder very well knew the taxability of his activities and therefore, without any resistance he paid the Service Tax 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. 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)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

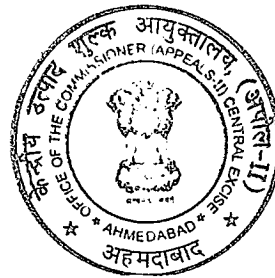
ATTESTED

  
(S. DUTTA) 28/11/16

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

To,

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



Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-III, Ahmedabad.
- 4) The Asst. Commissioner(System), Service Tax Hq, Ahmedabad.
- 5) Guard File.
- 6) P. A. File.

