सत्यमेव जयते

प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST , Commissionerate- Ahmedabad South,
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
4th Floor, GST Bhavan, 380015

फा.सं. STC/4-22/O&A/2016-17 **DIN- 20230164WS0000222473**

आदेश की तारीख: Date of Order: 30.12.2022

जारी करने की तारीख: Date of Issue : 13.1.2023

द्वारा पारित Passed by: Shri Shravan Ram , JOINT COMMISSIONER

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मूल आदेश सं./Order-In-Original No.: 66/CGST/Ahmd-South/JC/SR/2022-23

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यह प्रति उस व्यक्ति लिए (जिनके) जिसके ,को (यों) यह आदेश जारी किया गया है ,उसके (उनके) व्यक्तिगत उपयोग के लिए नि:शुल्क प्रदान की जाती है ।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त ,(अपील)केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवनअहमदाबाद ,आंबावाड़ी ,–को प्रारूप 15 **एस.टी.–4** में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00-/ only.

उक्त अपील दो प्रतियों में प्रारुप सं .एस.टी.–4 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क 2001 ,नियमावली (अपील)के नियम के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए) जिसके विरुद्ध अपील की गई है -/2.00 अथवा उक्त आदेश की अन्य प्रति जिसपर रु (का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरूद्ध आयुक्त में शुल्क के (अपील)7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुकतान करके अपील की जा सकती है ।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. STC/4-22/O&A/2016-17 dated 6.4.2017 M/s Orchid Whitefield Vikas Mandal, 10th Floor, commerce House-4, Beside Reliance Petrol Pump, 100ft. Ring Road, Prahladnagar, Ahmedabad-380015.

BRIEF FACTS OF THE CASE:-

M/s. Orchid Whitefield Vikas Mandal, 10th Floor, Commerce House-4, Beside Reliance Petrol Pump, 100Ft. Road, Prahladnagar, Ahmedabad-380015 (herein after referred to as "Service Society" for the sake of brevity), which is presently operating from Corporate Office of Ms. Goyal Group of Companies, 10th Floor, Commerce House-4, Beside Reliance Petrol Pump, 100Ft. Road, Prahladnagar, Ahmedabad-380015, engaged in the management & maintenance of the "Orchid Whitfield" residential Project. They are collecting a lump sum amounts for management and maintenance of said residential plots under different heads namely "Maintenance Deposit", "Running Monthly Maintenance Advance" & "Parking Deposit" etc. as a contribution from members of the said Service Society, 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, they have obtained Service Tax Registration bearing No.AAAJ00213DSD001 under the category of "Club or Association's Services" from Service Tax Commissionerate, Ahmedabad, on 11/03/2013.

2. Show Cause Notice as detailed in TABLE-1 below, was issued by the Joint Director, DGCEI, Ahmedabad to the Service Society for non-payment of Service Tax:

Table - 1

Sr. No	Show Cause Notice File No.	Date	Issued by	Period	Amount of Service Tax not paid (Rs.)
1	DGCEI/AZU/36-163/2014-15	30.09.2014	Joint Director, DGCEI, Ahmedabad	January 2012 to Dec. 2012	20,42,920/-

3. 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. In response to the

same, the Service Society has issued letter dated 26.2.2016 to M/s Goyal& Co. and copy endorsed to Range office informing that they had been handed over the affairs of the society only on 16.03.2015, till the date of handing over the society, it was managed by M/s Goyal& Co. Further, it was also mentioned that the new committee would be responsible only from the date of handover i.e. 16.03.2015 and all the liabilities whatsoever including any statutory obligations related to the Service Society shall remain with the earlier management.

4. The said Service Society has also submitted details for the further period from 2012-13 (From January 2013 to March 2013), for the period 2013-14 & 2014-15 (up to March2015) vide their letter dated 17.05.2015. From the details submitted by the Service Society vide letter dated 17.05.2015, it is observed that they have continued to follow the same practice of not paying the Service Tax which appeared taxable as "service" (the service which was until now known as "Club or Association's service) defined in clause (44) of the Section 65B (w.e.f. 01.07.2012) of the Finance Act 1994 as detailed below:

Sr. No.	Name of the client	For F.Y. 2012-13 (January 2013 to March 2013)	For F.Y. 2013-14	For F.Y. 2014-15	Total taxable Value	Service Tax @ 12.36%
1	Orchid Whitefield Vikas Mandal	1,06,87,342	2,94,91,408	42,53,934	4,44,32,684	54,91,880
Total		1,06,87,342	2,94,91,408	42,53,934	4,44,32,684	54,91,880

5. It appeared that the facts, circumstances and contraventions of the provisions ofthe Finance Act, 1994 and the grounds relied upon in the present notice are similar to those discussed in the earlier Show Cause Notice mentioned at Para 2 of Table-1 above and therefore, this notice is being issued in terms of Section 73(1A)

of the Finance Act, 1994 which has been introduced in the Finance Act, 2012.

6. Accordingly, M/s Orchid Whitefield Vikas Mandal, situated at 10th Floor,Commerce House-4, Beside Reliance Petrol Pump, 100Ft. Road, Prahladnagar Ahmedabad, were called upon to show cause to the Joint Commissioner, Service Tax, 1st Floor, Central Excise Bhavan, Panjarapole, Ahmedabad vide show cause notice F.No. STC/4-22/O&A/2016-17 dated 06/04/2017, as to why:

(i) 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, as detailed in Annexure-A, should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994;

(ii) Interest as applicable on the amount of service tax liability of Rs. 54,91,880/-should not be recovered from them for the delay in making the payment, under Section 75 of the Finance Act, 1994 as amended;

(iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 as amended for the failure to make the payment of service tax within the prescribed time limit under the law;

(iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 as amended for the failure to self assess the Service Tax liability.

PERSONAL HEARING:-

7. Personal hearing was granted to the assessee on 08/10/2020, 27/10/2020, 11/03/2022, 21/03/2022 and 19/05/2022 by my predecessor. From the records, it appears that the assessee has not appeared for personal hearing on any of the given dates. To follow the principles of natural justice, the undersigned has granted opportunity of personal to the assessee on 21/10/2022 and

12.12.2022. The representatives of the assessee Shri Rahul Patel, CA appeared on behalf of the assessee on 12/12/2022 and referred to the SCN issued by the DGCEI and requested to drop the proceeding on limitation and monetary grounds. Shri Patel further requested one week period for written submission.

DISCUSSION AND FINDINGS: -

8. I have carefully gone through the facts of the case mentioned in the Show Cause Notice bearing no. STC/04-22/O&A/2016-17 dated 06/04/2017, relevant case records and submission/defence reply made by the assessee vide letter dated 15/02/2021 as well as during personal hearing in the matter. I find that the Noticee was issued a show cause notice dated 30/09/2014 consequent to initiation of inquiry by DGCEI, Zonal Unit, Ahmedabad. The Noticee was collecting lump-sum amountsfor the management and maintenance of its residential project namely "Orchid Whitefield" from its membersunder different heads namely "Maintenance Deposit", "Running Monthly Maintenance Advance" & "Parking Deposit" etc. which appeared liable for Service-Tax. The Noticee continue the practice of non-payment of Service-Tax and accordingly a periodical show cause notice has been issued to the Noticee on similar grounds. It is alleged in the show cause notice that the amounts thus collected, formed part of consideration against provision of taxable service provided or to be provided by the association and the assessee failed to pay service tax on it. I also find that the assessee has not submitted any further written submission till date as assured by them during the personal hearing on 12/12/2022 and I therefore proceed to decide the matter based on the facts and available records

9. The assessee has contended that the maintenance charges collected from the habitants of the scheme, namely, **'Orchid Whitefield'** were exempted from payment of Service Tax in terms of Notification No. 8/2007-ST dated 01/03/2007 dated 01/03/2007 (applicable for theperiod upto June,2012) and entry

no. 28 of Notification No. 25/2012-STdated 20/06/2012 (applicable for the period from July,2012).

10. I find that the present show cause notice is for the period of January,2013 to March,2015 and the issues before me to decided are as under:-

(i) whether the amounts collected by the assessee in the name of maintenance deposit, monthly maintenance advance, parking deposit, etc., formed part of consideration against provision of taxable service provided by the assessee or not?

(ii) whether the amount collected by the assessee in the name of maintenance deposit, monthly maintenance advance, parking deposit, etc., attract exemption under entry no. 28 of Notification No. 25/2012-STdated 20/06/2012 (applicable for the period from July,2012).

11. I now proceed to consider the first issue regarding whether the amounts collected by the assessee in the name of maintenance deposit, monthly maintenance advance, parking deposit, etc., formed part of consideration against provision of taxable service provided by the assessee or not?

12. I find that the assessee has collected maintenance deposit, monthly maintenance advance, parking deposit, etc. as admitted in their submissions, during the period from January,2013 to March,2015 i.e. the period covered in the present show cause notice.

13. During the relevant period effective from July,2012, the definition of taxable service as per clause(51) of Section 65Bof the Finance Act,1994, was as under:

> (51) "taxable service" means any service on which service tax is leviable under section 66B;

14. Section 66B of the Finance Act,1994, provided as under:

SECTION 66B.Charge of service tax on and after Finance Act, 2012.—There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

15. As per Section 66B of the Finance Act,1994, service tax was levied on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another. The term "negative list" has been defined inclause (34) of Section 65B of the Finance Act,1994, as under: -

(34) "negative list" means the services which are listed in section 66D;

16. During the relevant period, Section 66D of the Finance Act,1994, as amended, provided as under:

SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely: —

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(i) * * * * *

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery;

Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; (l) services by way of –

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) [* * * *]

(ii) railways in a class other than—

* * * *

(iii) metro, monorail or tramway;

(iv) inland waterways;

(i) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(ii) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

(i) by road except the services of—

(A) a goods transportation agency;or

(B) a courier agency;

(ii) * * * * ; or

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

17. The term 'service' has been defined in clause(44) of Section 65Bof the Finance Act,1994, as under:-

(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

(ii) 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

(iii) 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;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

18. In view of the above, during the relevant period, the taxable service means any activity carried out by a person for another for consideration in the taxable territory, other than those excluded under clause (44) of Section65B of the Finance Act,1994[i.e. (a) an activity of transfer of title in goods or immovable property or an activity of deemed sale within the meaning of clause (29A) of Article 366 of the Constitution of India or 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; and (c) fees taken in any Court or tribunal established under any law for the time being in force] not specified in the negative list under Section 66D of the Finance Act,1994.

19. I find that the above said activity in relation to provision of services, facilities or advantages for a subscription**or any other amount,** is carried out by the assessee at Ahmedabad for its members or any other person. I further find that the above said activity in relation to provision of services, facilities or advantages for a subscription **or any other amount**, carried out by the assessee, for its members, etc, is not (a) an activity of transfer of title in goods or immovable property or an activity of deemed sale within the meaning of clause (29A) of Article 366 of the Constitution of India or a transaction in money or actionable claim; or (b) a provision of service by an employee to the employer in course of or in relation to his employment; or (c) fees taken in any Court or tribunal established under any law for the time being in force and thus not excluded under clause (44) of Section 65B of the Finance Act,1994.

20. I also find that the above said activity in relation to provision of services, facilities or advantages for a subscription **or any other amount**, carried out by the assessee, for its members etc., is not specified in the negative list under Section 66D of the Finance Act,1994, as amended.

21. In view of the above, I find that all ingredients of a taxable service do exist in the above said activity, in relation to provision of services, facilities or advantages for a subscription**or any other amount**, carried out by the assessee, for its members etc. Therefore, I conclusively hold that the above said activity in relation to provision of services, facilities or advantages for a subscription etc, carried out by the assessee, for its members etc., is a taxable service leviable to service tax under Section 66Bof the Finance Act, 1994, during the relevant period, effective from July,2012.

22. Thus, I come to the conclusion that the activity, in relation to provision of services, facilities or advantages for a subscription **or any other amount** , carried out by the assessee, for its members etc is a taxable service under Section 66/66B ofthe Finance Act,1994, during the relevant period and the amount collected by the assessee in the name of maintenance deposit, monthly maintenance advance, parking deposit, etc. during the relevant period, shall form part of consideration against provision of taxable service provided or to be provided by the assessee.

23. In the matter of Emerald Court Co-operative Housing Ltd (2021(54) G.S.T.L. 41 (A.A.R.-GST-Mah) has held that maintenance charges received by society from its members amounted to consideration received for supply of goods/services as separate entity - GST applicable on maintenance charges (by whatever name called) collected from its members. The relevant text of the order of the AAR under GST, Maharashtra is reproduced hereunder:

> ***"5.8 Therefore, in view of the amended Section 7 of the CGST Act, 2017, we find that the applicant society and its members are distinct persons and the amounts received by the applicant, against maintenance charges, from its members are nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that GST is not leviable on the maintenance charges collected by them from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received against maintenance charges, from its members."***

24. With respect to the second issue, it is to be seen whether the said amounts collected by the assessee in the name of maintenance deposit, monthly maintenance advance, parking deposit, etc., attract exemption under entry no. 28 of Notification No.25/2012-ST dated 20/06/2012 (applicable for the period from July,2012).

25. I find that the assessee has contended that the maintenance charges collected from the habitants of the scheme namely, "Orchid Whitefield" were exempted from payment of service tax in terms of Notification No. 8/2007-ST dated 01/03/2007 (applicable for the period upto June,2012) and entry no, 28 of notification no. 25/2012-ST dated 20/06/2012 (applicable for the period from July, 2012). I find that it is well settled principle that "the burden to prove eligibility to exemption under a notification rests on the party, who claims the exemption." In this connection, I rely upon the following judgements of the Hon'ble Supreme Court to substantiate my claim:-

(a)Commissioner OfCus. (Import), Mumbai Versus Dilip Kumar & Company 2018(361) E.L.T.577(S.C.), Hon'ble Supreme Court of India, has held that the burden in on the party who claims exemption, to prove the facts that entitled him to exemption. The relevant text (para 43, 51 and 52) of the judgement is reproduced hereunder:

"43. There is abundant jurisprudential justification for this. In the Governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in

which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.

51. In Hari Chand case (supra), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

(b) KrishiUpajMandiSamiti Versus Commissioner of C.Ex. & S.T., Alwar [2022 (58)G.S.T.L.129 (S.C.), the Hon'ble Supreme Court has held that exemption notification should not be liberally construed; Claimant must fall within its ambit and must fulfill conditions contained therein; In case conditions are not fulfilled, notification cannot be made applicable by implication; It must be given a meaning as intended by legislature in terms of words used therein without adding or subtracting anything therefrom. The relevant text (para 8, 8.1, 8.2 & 8.3) of the judgement is reproduced hereunder:

> ***"8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.***
>
> ***8.1 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.***
>
> ***8.2 The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.***
>
> ***8.3 As per the law laid down by this Court in a catena of decisions, in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity, which is so not found in the present case."***

(c) In the case of State of Gujarat Vs Arcelor Mittal Nippon Steel India Ltd [2022 (379) ELT 418(S.C.) it has been held by the Hon'ble Supreme Court that:

"14.1 While the exemption notification should be liberally construed, beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise.

14.2 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute

should be construed strictly and it is not open to the Court to ignore the conditions prescribed in industrial policy and the exemption notifications.

14.3 The exemption notification should be strictly construed and given meaning according to legislative intendment. The statutory provisions providing for exemption have to be interpreted in the light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.

14.4 As per the law laid down by this Court in catena of decisions, in the taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining defined meaning. Strict interpretation to the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it alleges to absurd results, which is so not found in the present case.

14.5 In the present case, the intention of the State to provide the incentive under the incentive policy was to give benefit of exemption from payment of purchase tax was to the specific class of industries and, more particularly, as per the list of 'eligible industries'. Exemption was not available to the industries listed in the 'ineligible' industries. It was never the intension of the State Government while framing the incentive policy to grant the benefit of exemption to 'ineligible industries' like the power producing industries like the EPL, which as such was put in the list of 'ineligible' industries.

14.6 Now, so far as the submission on behalf of the respondent that in the event of obscure in a provision in a fiscal statute, construction favourable to the assessee should be adopted is concerned, the said principle shall not be applicable to construction of an exemption notification, as it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification. Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand the scope deviating from the language. There is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification."

(d) In the case of Commissioner of C.Ex., New Delhi Versus Hari Chand Shri Gopal [2010(260) E.L.T. 3 (S.C.) it has been held by the Hon'ble Supreme Court at para 22 as under:

"24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and

circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non- compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential."

(e) In the case of M/s. Mysore Metal Industries [1988(36)ELT369(SC)], Hon'ble Supreme Court of India, has held that the burden in on the party who claims exemption, to prove the facts that entitled him to exemption. The relevant text is reproduced here:

"2. We find that the Tribunal arrived at its finding on an examination of all the relevant and legal materials including the chemical test report. The burden in on the party who claims exemption, to prove the facts that entitled him to exemption. The appellant has failed to discharge the onus. As the Tribunal arrived at its conclusion based on the relevant facts and circumstances, there is no scope or ground for interference with the order of the Tribunal. In this premises this appeal is rejected."

26. I find that, during the relevant period i.e. January,2013 to March, 2015, entry no. 28 of Notification No.25/12-ST dated 20/06/2012,effective from July,2012 provided as under:-

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, 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; 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;

---

2. Definitions. – For the purpose of this notification, unless the context otherwise requires, –

(zc) "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;

(ze)"single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

3. This notification shall come into force on the 1st day of July, 2012.

27. Thus, as per entry no. 28 of notification no. 25/2012-ST dated 20/06/2012, service provided 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 were exempt from the whole of the service tax leviable thereon under section 66Bofthe Finance Act, 1994, subject to the condition that such services are provided, as a trade union; or for the provision of carrying out any exempted activity; or 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, if the amount collected is within the limit of five thousand rupees per month per member, Therefore, it needs to be examined whether above said service fulfils all the criteria laid down under entry no. 28 of notification no. 25/2012-ST dated 20/06/2012.

28. First of all, I have to see, whether the assessee is an unincorporated body or a non-profit entity registered under any law for the time being in force and it has provided services to its own members by way of reimbursement of charges or share of contribution. The assessee has submitted that they are not a co-operative service society as incorporated/constructed under the Gujarat Co-operative Societies Act, 1961, but has failed to submit anything to prove as to whether the assessee is an unincorporated body or a non-profit entity registered under any law for the time

being in force and it has provided services to its own members by way of reimbursement of charges or share of contribution. Nothing has been produced before me to contend that the same was not voluntarily. I hold that the assessee has failed to prove that they have fulfilled the condition that the assessee is an unincorporated body or a non-profit entity registered under any law for the time being in force and it has provided services to its own members by way of reimbursement of charges or share of contribution.

29. In respect of other condition that such services are provided, as a trade union; or for the provision of carrying out any exempted activity; or 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, if the amount collected is within the limit of five thousand rupees per month per member, I find that the assessee has submitted that the amounts of maintenance charges collected from the residents were below the threshold limit provided in the said Notification for the purpose of exemption, but he has failed to submit anything to prove the same in respect of all of their receipts during the relevant period. The assessee in their defence submission, only produced only a copy of a receipt no. 83 dated 28/05/2013, issued for an amount of Rs.80,544/-, for example and submitted that the amount pertains to the period from 01/11/2012 to 31/10/2014 and though the amount of receipt exceeds the threshold limit i.e. Rs.80,544/-, the amount actually received per month is Rs.3356/- and accordingly it falls below the prescribed threshold and contended that hence, whole of the amount of Rs.80,544/-shall qualify for exemption under the said notifications. I find that this is not sufficient evidence to prove that whole of their receipts of amounts as alleged in the subject show cause notice are made 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 and are also within the limit of five thousand rupees per month per member.

30. In view of the above, I come to conclusion that the assessee has failed to prove that they qualify for exemption under entry no. 28 of notification no. 25/2012-ST dated 20/06/2012, for the period in the show cause notice i.e. January,2013 to March,2015. It is a well settled principle that the burden to prove eligibility to exemption under a notification rests on the party, who claims the exemption in view of the Hon'ble Supreme Court's various decisions discussed para supra.

31. I find that every transaction should pass the above discussed tests, to be eligible for exemption under relevant notifications. Further, the onus to prove lies with the assessee who claims exemption from payment of duty and he has to ensure as to whether the particular transaction is proved to be eligible for exemption. The assessee is required under Section 70 of the Finance Act,1994, to himself assessee the tax liability in respect of transactions made by him and the facts have to be recorded in the service tax returns (ST-3) to be filed with the department under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules,1994. Further, the assessee or its authorised signatory, is required to declare in the self-assessment memorandum, in the service tax return (ST-3) to be filed with the department under Section 70 of the Finance Act,1994 read with Rule 7 of the Service Tax Rules, 1994 that the particulars given in the return are in accordance with the records and books maintained by them and are correctly stated and he has assessed and paid the service tax correctly with due interest and/or availed and distributed Cenvat credit correctly as per the provisions of the Finance Act,1994and the rules made thereunder and that he is authorised to sign on behalf of the assessee.

32. I find that it is well settled principle that "the burden to prove eligibility to exemption under notification rests on the party, who claims exemption." In the case of M/s. Mysore Metal Industries [1998(36)ELT369(SC)], Hon'ble Supreme Court of India has held that the burden is on the party who claims exemption, to prove the

facts that entitled him to exemption. Since it is a case of exemption from tax, there is no question of any liberal construction to extend the term and scope of the exemption notification, which must be strictly construed. No extended meaning can be given to enlarge the scope of exemption. In the case of M/s. Rajasthan Spinning & Weaving Mills Ltd., [1995(77)ELT 474(SC)], Hon'ble Supreme Court of India held that there is no question of any liberal construction to extend the term and the scope of the exemption notification. The relevant text is reproduced here:

> ***"16. Lastly, it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since it is a case of exemption from duty, there is not question of any liberal construction to extend the term and the scope of exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification."***

33. In view of the above, the assessee was not only required to himself assess the tax liability in respect of the transactions made by him and the facts had to be recorded in the returns filed with the department and declare in the self-assessment memorandum that the particulars given in the returns are in accordance with the records and books maintained by them and are correctly stated and he has assessed and paid the service tax correctly with due interest as per the provisions of the Finance Act, 1994 and the rules made thereunder, but also was required to satisfactorily prove the facts that entitled him to exemption as held by the Apex Court that the burden is on the party who claims exemption. I find that the eligibility of exemption claimed by the assessee has not been satisfactorily proved by the assessee in respect of their transactions of receipt during the period from January,2013 to March,2015.

34. In view of the above, I hold that the amount of **Rs.4,44,32,684/-**collected during the period from January,2013 to

March,2015 by the assessee in the name of maintenance deposit, monthly maintenance advance, parking deposit, etc., shall form part of consideration against provision of taxable service provided or to be provided by the assessee. I further find that the assessee has failed to satisfactorily prove eligibility of exemption claimed by them in respect of their above said transactions. Therefore, I hold that the assessee is liable to pay service tax amounting to **Rs. 54,91,880/-** for the period fromJanuary,2013 to March,2015. Since the assessee has failed to deposit the service tax within the time stipulated under Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, they are also liable to pay interest at the appropriate rate under Section 78 of the Finance Act,1994.

35. I find that the assessee has submitted to drop the proceeding on limitation and monetary ground. In the context of the assessee claim to drop the show cause notice on limitation, I find that the present show cause notice is not barred by limitation. The show cause notice has been issued for subsequent period covering the period from January,2013 to March,2015 and has been rightly issued under Section 73(1) of the Finance Act,1994. The assessee has filed the ST-3 returns for the period from October,2012 to March,2015 (i.e. the period covered in the present SCN which is January,2013 to March,2015) on 03/05/2016. The show cause notice dated 06/04/2017 has been rightly issued within "thirty months" from the relevant date in terms of Section 73(1) of the Finance Act,1994. The said section lays down a time limit of 30 months from the relevant date and the relevant date is separately provided under Section 73(6)(i)(a) which is reproduced here under :-

> ***"(6) For the purposes of this section, "relevant date" means, — (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —***
>
> ***(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;"***

Regarding the assessees claim to the drop the proceedings on monetary ground, I am not able to ascertain the logic of monetary grounds to drop the show cause notice as the assessee has not specifically mentioned in what context the show cause notice is to be dropped on monetary grounds.

36. I find that the assessee has submitted that the demand of Service Tax for the subsequent period is unsustainable as the provisions of Section 65(105)(zzzb) of the Act were not in vogue since 01/07/2012, hence, in absence of the said provisions, the demands raised by the investigating authority in the notice for the period commencing from 1st July,2012 is not sustainable. However, I find that the said services did not find place under the negative list effective from 01/07/2012 and with the specific nomenclature of "any other amount", therefore, I hold that the services provided by the assessee against the consideration received in any name ("any other amount") would be taxable service.

37. The assessee has also submitted that the investigating authority ought to have demanded the tax, interest and penalty from the Goyal Group. However, I find that the consideration has been received by the assessee against the services provided or to be provided by them. As per Section 68 of the Finance Act, 1994, every person providing taxable service to any person shall pay service tax. A person other than the service provider may be made liable to pay service tax by the Central Government only, by a notification as provided under sub-section (2) of Section 68 of the Finance Act,1994. Since the services provided by the assessee are not notified by the Central Government, the service provider, only is liable to pay service tax, in such cases, as provided under sub-section (1) of Section 68 of the Finance Act,1994 read with clause (d) of Rule 2 of the Service Tax Rules, 1994. Therefore, only the assessee, being the service provider, is liable to pay service tax in the instant case.

38. The issue of imposing penalty is no more res integra in view of the judgement of the Hon'ble Supreme Court in the case of Dharmendra Textile Processors and Ors., 2002(231) E.L.T.3(S.C.) and Rajasthan Spinning and Weaving Mills-2009 (238) E.L.T.3 (S.C.). The Apex Court has held that penalty is civil liability and the ratio of the same is applicable in all case of tax evasion. In the present case, it is proved beyond doubt that the assessee has deliberately evaded payment of service tax and continued the practice of evasion even after they were served with a show cause notice dated 30/09/2014 by the Joint Director, DGCEI, Ahmedabad Zonal Unit, Ahmedabad. Accordingly, they are liable for penalty under Section 76 of the Finance Act,1994.

39. I find that the assessee is required under Section 70 of the Finance Act, 1994, to himself assess the tax liability in respect of transactions made by him and the facts have to be recorded in the service tax return (ST-3) to be filed with the department under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. I find that the assessee has failed to properly self assess their service tax liability and failed to file the service tax returns in time. Thus they have rendered themselves liable to penalty under the provisions of sub-section (2) of Section 77 of the Finance Act, 1994.

40. In view of my above findings, I pass the following order:

ORDER

(i) I confirm and order 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,2015under the proviso to Section 73(2) of the Finance Act,1994;

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

(iii) I impose 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 (ii) 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) I impose 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.

30.12.22

(Shravan Ram)
Joint Commissioner (O&A)
Central GST-Ahmedabad South

By Registered Post A.D./Email
F.No. STC/04-22/O&A/2016-17 Dated : 30/12/2022

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

Copy to:

1) The Commissioner, CGST, Ahmedabad South.
2) The Assistant Commissioner, Central GST, Div-VI, Ahmedabad South.
3) The Assistant Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
4) The Superintendent, Range-IV, CGST, Div-VI, Ahmedabad South.
5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
6) Guard File.