

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/610 /2007AND 620/2007-SM[BR]

Date 07/02/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S MOKHA BUILDERS AND PROMOTERS
PARADISE VILLA, SHOP NO. 2 AND 3, NORTH CIVIL
LINES, JABALPUR 482001.

2, PARADIES VILLA
C/O M/SMOKHA BUILDERS AND PROMOTERS

M/S MOKHA BUILDERS AND PROMOTERS

Appellant

Vs

Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of Final order No.279-280/2008-SM[BR] Dated 22.1.2008
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

MR.ANKUR KHARE

36-37,F/F, G.D. COMPLEX, MARHARAL, JABALPUR (M.P.)

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 610 & 620 of 2007-SM(BR)

(Arising out of Order-in-Appeal No. 05-04ST/BPL/07-08 dated 17.4.07 passed by the Commissioner, Customs & Central Excise, Bhopal)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

Mokha Builders and Promoters

Appellant

Vs.

CCE, Bhopal

Respondent

Appearance

None

Ms. Archana P. Mittal, Jt. CDR

- For appellant

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 22.1.2008

Final Order No. 279-80/06 SM (BR) dated 22.1.08

Per S.S. Kang:

Common issue is involved in these appeals, therefore, are being taken up together.

2. Heard Id. Jt. CDR. None appeared on behalf of the appellant in spite of notice. From the record, I find that on the earlier hearing when application for condonation of delay was allowed, the appellants were unrepresented.
3. The appellant filed these appeals against the impugned order whereby refund of the appellant was rejected. The appellants were registered with the Revenue authorities as provider of service of construction of residential complex. The appellant paid the Service Tax and thereafter filed refund application on the ground that they do not come under the service of Service Tax on the service of construction of residential complex. The adjudicating authority rejected the refund claim the appellant filed appeal the same was rejected.
4. In the present appeal, the contention of the appellant is that the appellants are not liable to pay the Service Tax^{act} in respect of unjust enrichment. The contention in the appeal is that the Service Tax has not been collected from the purchasers of the flats.
5. The adjudicating authority gave a finding of fact that the agreement for sale of flat is entered before the construction of the flat is complete and the appellant constructed the flat. This finding is not under challenged in

the present appeal. As per the provisions of Service Tax a person who construct a new residential complex or a building or having more than 12 residential units are liable to pay Service Tax. In the present case, the appellant constructed a multi-storied building and entered into an agreement with their customers for sale of the flat before starting the construction, therefore, liable for Service Tax. In respect of the unjust enrichment, I find that the sale deed entered with their customer also mentions the Service Tax will be paid by the purchasers of the flat. In view of this, I find no infirmity in the impugned order whereby the refund claim was rejected. The appeals are dismissed,

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM