

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75289 of 2017

(Arising out of Order-in-Original No. 73/Commr/ST-II/Kol/2016-17 dated 18.10.2016 passed by the Commissioner of Service Tax-II Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road Kolkata-700107)

M/s. A. B. Nirvan Builders Private Limited : Appellant
5/1A, Hungerford Street, Kolkata-700017

VERSUS

Commissioner of Service Tax-II, Kolkata : Respondent
Kendriya Utpad Shulk Bhawan,
180, Shantipally, Rajdanga Main Road Kolkata-700107

AND

Service Tax Appeal No. 75447 of 2017

(Arising out of Order-in-Original No. 73/Commr/ST-II/Kol/2016-17 dated 18.10.2016 passed by the Commissioner of Service Tax-II Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road Kolkata-700107)

The Commissioner of Service Tax-II, Kolkata : Appellant
Kendriya Utpad Shulk Bhawan,
180, Shantipally, Rajdanga Main Road Kolkata-700107

VERSUS

M/s. A. B. Nirvan Builders Private Limited : Respondent
5/1A, Hungerford Street, Shakespeare Sarani,
Kolkata-700017

APPEARANCE:

Shri Navin Kumar Agrawal, Advocate for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77457-77458/ 2025

DATE OF HEARING: 19.09.2025
DATE OF PRONOUNCEMENT: 22.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Service Tax Appeal No. 75289 of 2017 M/s. A. B. Nirvan Builders Private Limited (herein after referred as the appellant-assessee) against the Order-in-Original No. 73/Commr/ST-II/Kol/2016-17 dated 18.10.2016 passed by the Commissioner of Service Tax-II Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road Kolkata-700107, wherein the demand of service tax amounting to Rs. 21,18,991/- has been confirmed by the Ld. Commissioner.

Service Tax Appeal No. 75447 of 2017, has been filed by the Revenue for amount of Rs. 98,21,758/-, Out of total dropped demand of Rs.1,79,97,104/- in the Order-in-Original No. 73/Commr/ST-II/Kol/2016-17 dated 18.10.2016 passed by the Commissioner of Service Tax.

As both the appeals emanate from the same Order-in-Original, both are taken up together for passing a common order.

2. The facts of the case are that the Appellant-assessee has taken registration under service tax on 24.12.2013 having Service Tax Registration No. AAECA2585RSD001 for providing services of (1) Management, Maintenance & Repairing Services (2) Renting of Immovable Property Services and (3) Real Estate Agent Services. They have filed a declaration under sub-section (1) of Section 107 of the Finance Act, 2013 read with Rule 4 of the Service Tax Voluntary Compliance Encouragement Scheme, 2013(VCES) in Form VCES-1 dated 30.12.2013.

2.1. A search was conducted by the officers of Directorate General of Central Excise Intelligence (DGCEI), Kolkata Zonal Unit at the office premises of the appellant-assessee on 19.12.2013. After investigation, a show cause notice no V(15)459/ST-II-Adjn/VCES/14/1046-47 dated 24.12.2014 was issued to the appellant demanding Service Tax amounting to Rs. 2,01,16,095/-, including Cesses, along with interest and penalty. The said Notice was adjudicated by the Ld. Commissioner of Service Tax. vide Order-in-Original No. 73/Commr/ST-II.Kol/2016-17 dated 18.10.2016, confirming the demand of service tax amounting to Rs. 21,18,991/-. The Ld. Commissioner has dropped the remaining demand raised in the Notice.

2.2. Aggrieved against the confirmation of the demand of service tax of Rs. 21,18,991/-, the appellant-assessee has filed appeal before this Tribunal. Out of the demand of Rs.1,79,97,104/- dropped in the impugned order, Revenue has filed appeal against the dropping of demand of Rs. 98,21,758/-.

3. The appellant summarized the issues on which demand has been Confirmed in the impugned order as under:

Demand Summary			
S. No	Issue	Classified in SCN under following heads	Tax Amount
1	Amount received as advance in Sinking Fund	Management, Maintenance Or Repair Service	10,02,588
2	Amount Received as electrical & Generator Charges		10,73,940
3	Amount received for providing miscellaneous services		22,233
4	Amount received as advance maintenance deposit		20,230
	Total Demand		21,18,991

3.1. The appellant-assessee submits that they have collected a **sinking fund deposit of Rs. 30/sq. ft.** only for the project *Club Town Residency*, in accordance with **Part III(a)** of the buyer agreement. Based on the **super built-up area of 3,22,111 sq. ft.**, the total sinking fund deposit receivable amounted to **Rs. 96,63,330/-**, collected in stages as per construction progress. The **refundable sinking fund** was intended to provide a reserve for the flat owners' association for future contingencies such as major repairs. Since the **maintenance account has not been settled**, the sinking fund has not yet been handed over and remains with the appellant. Since this fund is a **pure deposit without any service element**, the appellant-assessee it should not attract service tax. It is treated as a **current liability** in the balance sheet (Rs. 93,10,650/- in 2011-12 and Rs. 96,63,330/- in 2012-13) and not income, making the **service tax demand unjustified**.

3.2. The Ld. Commissioner has upheld the demand alleging the amount was for **maintenance service** under Section **65(105)(zzg)/65B(44)** of the Finance Act, 1994. However, it is the submission of the appellant-assessee that the amount belongs to

the owners' association, and the company only acts as a **custodian**, so no service tax is payable. The practice of collecting such deposits for future maintenance and handing them over to **Resident Welfare Associations** is **well-established in the industry**. Being refundable and without service provision, it qualifies as a **non-taxable receipt**.

3.3. In support of their contention, the appellant=assessee relied on the clarifications issued by CBEC vide Para 2.3.2 of the Service Tax Education Guide dated 20.06.2012, wherein it has been clarified as under:-

"Returnable deposit is in the nature of security and hence do not represent consideration for service."

3.4. Further, the appellant-assessee relied on the following decisions in support of their contentions:

- 2014 (34) S.T.R. 139 (Tri.-Mumbai) Kumar BeherayRathi V/s Commissioner Of Central Excise, Pune-III,
- 2019 (22) G.S.T.L. 450 (Tri. - All.) KDP Infrastructure Pvt. Ltd. vs Commr. OF C. EX. & S.T., Ghaziabad,
- 2018 (19) G.S.T.L. 277 (Tri. - All.) P.V.S. Construction Pvt. Ltd. vs Commr. OF C. EX. & S.T., Ghaziabad,
- M/s Shipra Estate Ltd. vs Commissioner of Customs & Central Excise, Noida.

3.5. Accordingly, the appellant-assessee submits that the demand of service tax confirmed on this ground is not sustainable.

4. In respect of the Demand of Rs. 10,73,940/- confirmed on "Electric and Generator Charges", the appellant-assessee submits that they have collected an amount of Rs.1,01,09,193/- and Rs.3,52,680/- as Electric and Generator charges for the years 2011-12 and 2012-13 respectively from their buyers. The appellant-assessee submits that these charges were not received for any independent service, but rather as part of the total sale consideration for the flats. The agreement between the appellant-assessee and buyers (Para 3.2 of the agreement for sale) makes it clear that the construction includes buildings and common portions as per specifications in the fourth schedule. The fourth schedule includes electrical works and generator facilities for common areas, indicating that such works are integral to the overall construction of the housing complex. Therefore, these charges form part of the composite construction service and not a separate taxable service. Since the sale of flats was not taxable prior to 01.07.2010, there can be no service tax liability on such amounts.

4.1. In support of their claim, the appellant-assessee submitted a certificate issued by a Chartered Accountant wherein it is categorically mentioned that the "Electric and Generator Charges" are included as a part of the cost of the Flat. Accordingly, the appellant-assessee submits that the demand of service tax confirmed on this ground is not sustainable.

5. In respect of the demand of Service Tax of Rs. 22233/- on Miscellaneous Receipts, the appellant-assessee submits that that Rs. 215853/- has been recorded as 'Miscellaneous Receipts' in the other income schedule of Profit & Loss Account for the Financial Year 2011-2012. **Service tax amounting to Rs. 22,233/-** has been demanded on this 'miscellaneous receipts' without any basis. Nowhere in the SCN or in the impugned order, any reason has been given for confirming demand on this receipt is mentioned. The appellant-assessee submits that this receipts involves amount received from flat owners for fitting of electric meters and other miscellaneous supply of materials. The appellant has purchased electrical fittings on behalf of flat owners and the amount for the same was reimbursed to them by the flat owners. They haven't provided any service to the flat owners in this regard. In support of this claim, the appellant submitted some sample copies of tax invoice for purchase of electric meter on which VAT has been charged by the respective vendors in this regard in the F.Y. 2009-2010 & 2010-2011. Accordingly, the appellant-assessee submits that the demand of service tax confirmed on this ground is not sustainable.

6. Regarding the demand of Service Tax of Rs. 20230/- on Advance Maintenance Deposits, the appellant-assessee submits that in the course of investigation by the DGCEI, the appellant came to know that maintenance service provided by them to flat owners is a taxable service. Thereafter, they opted for VCES scheme and declared and paid service tax on the total expenses incurred on account of this.

Expenses incurred for maintenance	Rs. 62,43,796
Less: Actual maintenance receipt from buyers (322111 sq. ft. *18/Sq. ft.)	Rs. 57,97,998
Balance Amount to be received	Rs.4,45,798/-

They paid service tax on Rs. 62,43,796/- rather than on Rs. 57,97,998/-. For the first year, i.e. 2010-11, they had taken SSI exemption limit of Rs. 10 Lakhs and made payment of balance amount under VCES. Hence, there is no short payment or non-payment of service tax on this portion. They have paid service tax amounting to Rs. 5,40,728/- on this service under VCES. This demand of Rs. 20,230/- is on account of advance maintenance deposits of Rs. 1,58, 706/- received during F.Y. 2012-13 whereas applicable service tax on this was already paid under VCES. In view of the aforesaid factual position, the appellant submits that, this demand of Rs. 20,230/- is not tenable and liable to be dropped.

7. Regarding the issues on which demand has been dropped, Department has filed appeal in respect of an amount of Rs. 98,21,758/-. These demands pertaining to the following two categories:

Description of Service	Total Tax Demanded	Demand due to calculation error	Demand due to Taxability Issues
Amount received as advances from customers	98,21,758	44,91,391	53,30,367

7.1. Regarding the demand of Rs. 44,91,391/- dropped in the impugned order, the appellant-assessee submits that this demand was raised due to Calculation Error on the amount received as advances from customers. The demand in the show cause notice has been incorrectly calculated on cumulative closing balances of various customer advance accounts from FY 2008-09 to 2012-13, totalling to Rs.8,87,87,268/-. However, the actual total advance received during this period, including the opening balance as on 01.04.2008, was only Rs.4,42,22,416/-, as evidenced by the ledgers. This discrepancy shows that the demand has been erroneously calculated on an excess amount of Rs.4,25,12,066/-. The Ld. adjudicating authority has accepted the incorrect method of calculation adopted by the department and dropped the service tax demand raised in the Notice on this count. In para 6.5.3 of the impugned order, the Ld. Adjudicating Authority has acknowledged that closing balances had been used to determine the tax liability instead of actual advances received during the financial years in question. The correct approach should have been to consider the opening balance as on

01.04.2008 along with actual receipts during the relevant financial years. The appellant-assessee asserts that this fundamental error in calculation has led to an inflated and incorrect tax demand, which has been rightly dropped by the adjudicating authority. Hence, Revenue's appeal on this count does not merit consideration.

7.2. Regarding the remaining dropped demand of service tax of Rs. 53,30,367/- on the amount received as 'advances from customers', the appellant-assessee submits that this amount has been shown as 'details of advances' standing as on 01.04.2008 to 31.03.2013. It has been alleged in the Show Cause Notice that the advances received from customers for the sale of flats, reflected under "Other Advances" were actually payments for services like electrical installation, maintenance, sinking fund, service charges, etc., and hence taxable under "Management, Maintenance & Repair Service." The appellant submits that these advances were wrongly classified and should have been grouped under "Advance against agreement" as they were payments toward the sale of flats. During the disputed period, the appellant-assessee was engaged in residential property development and sale. Since both Club Town Residency and Koyla Vihar projects received completion certificates before 1st July 2010, the advances received towards these flats are not taxable under the service tax regime, as per prevailing legal provisions.

7.3. The appellant submits that the Ld. Adjudicating Authority, in para 6.5.3 of the Order-in-Original, acknowledged that the advances were received for the sale of flats and not for any taxable service. He clearly held that the activities, if taxable, would fall

under "Construction of Residential Complex Service" and not "Management, Maintenance or Repair Services." Moreover, since the projects were completed before 01.07.2010, these transactions are outside the scope of taxable service.

7.4. The appellant submits that the demand of Rs. 5330367/- is determined in the Notice on the following figures:

Particulars	Value(Rs)	Service Tax Demand (Rs)
Opening Balance of 2008-2009	31543578	3898787
Receipts during the year 2008-09 to 2011-12	12878838	1431580
Total	44422416	5330367

7.5. The amount of Rs. 3,15,43,578/- appearing as opening balance in the F.Y 2008-2009 is nothing but amount received from prospective customers against booking of flats in Club town residency and Koyla Vihar Projects. Completion certificate was granted to Club town residency by Kamarhati Municipality in Feb' 2010 and was granted to Koyla Vihar by Rajarhat-Goplapur Municipality in July 2007 and in March 2006. However, this amount was wrongly reflected and regrouped in other advances. Most of these amounts were again regrouped in respective head 'advance against agreement' in succeeding years. The balance demand of Rs. 1431580/- consist of following:

Period	Value (Rs)	Service Tax Demand(Rs)	Remarks
2008-2009	100000	12360	Amount received from R N Dwivedi as advance against sale of flat. He transferred his booking to Smt. D Dwivedi and the flat was allocated to the transferee.
	5000000	618000	Amount received from Shree Rajat Enterprises as interest free financial assistance was refunded to him in F.Y 2009-2010.
2009-2010	350000	36050	Amount received from Mr. Dibakar Chakaraborty as interest free financial assistance was refunded to him in F.Y 2013-2014.
	404838	41698	Amount received from MD. Manowar Ismail F-0405 as advance against sale of flat and the flat was allocated to him.
2010-2011	700000	72100	Amount Received from ShakuntalaHarlalka as interest free financial assistance. This amount has not been refunded to the party till date.

2011-2012	6324000	651372	Amount received from prospective buyers against booking for sale of flats in a block in the Koyla Vihar project. However, that particular block in the Koyla Vihar Project could not be commenced in our company and the same was taken up by our sister concern. The advance so received from prospective buyers was eventually transferred to our sister concern (Koyla Vihar Developers LLP) during the F.Y 2012-13. Service tax on the said amount was paid by M/s Koyla Vihar Developers LLP.
	12878838	1431580	

7.6. In support of their claim, the appellant- assessee submits that a **certificate from the Statutory Auditor**, confirming that the amounts received were purely advances against the sale of flats, was furnished during the adjudication stage. This certificate, along with supporting documents such as the application forms, cheque details, ledgers showing transfer to M/s Koyla Vihar Developers LLP, and corresponding entries in their

books, further substantiates that the transactions were not for any taxable service but purely related to prospective sales of residential units. Therefore, the Adjudicating Authority, after thoroughly examining the documentary evidence and defense submissions, rightly concluded that the SCN was unsustainable. Thus, the appellant assessee submits that the demand dropped in the impugned order on this count is legally valid. Accordingly, they prayed for rejecting the Revenue's appeal filed against dropping of the demands by the Ld. adjudicating authority.

8. Regarding confirmation of the demand of Rs. 21,18,991/- in the impugned order, the Ld. A.R. reiterated the findings in the impugned order.

8.1. Regarding dropping of the demand of Rs. 98,21,758/-, for which appeal has been filed by the Revenue, the Ld. A.R. reiterated the points raised by the Revenue in the Grounds of appeal. Further, the Ld. A.R. submitted that the appellant-assessee received a good amount from their customers as advance for selling the flats shown in the breakup of "Other Advances" under the head of "Other Current Liabilities", but failed to produce any documentary evidence in support of their claim. Accordingly, the Ld. A.R. submitted that the amount shown as advance received from customers on account of sale of flats shown in the breakup of "Other advances" for the period 2008-2009 to 2012-2013 is nothing but the amount received for providing the maintenance service. Accordingly, the Ld. A.R. submits that the entire amount is taxable in the category of "Management, Maintenance & Repairing Service". Thus, he contended that the Ld. adjudicating authority is in error in dropping the demand. Thus,

he prayed for setting aside the demand dropped amounting to Rs. 98,21,758/- in the impugned order.

9. Heard both sides and perused the appeal documents.

10. We observe that out of the total demand of service tax of Rs. 21,18,991/-, Rs.10,02,588/- has been confirmed on account of the amount collected by the appellant-assessee as 'sinking fund'. We observe that the appellant-assessee has collected a **sinking fund deposit of Rs. 30/sq. ft.** for the project *Club Town Residency*, in accordance with **Part III(a)** of the buyer agreement. Based on the **super built-up area of 3,22,111 sq. ft.**, the total sinking fund deposit collected by the appellant-assessee collected at various stages of construction, totally amounting to **Rs. 96,63,330/-**. we find that the **refundable sinking fund** was intended to provide a reserve for the flat owners' association for future contingencies such as major repairs. Since the **maintenance account has not been settled**, the sinking fund has not been handed over to the association at that time and it remained with the appellant. The Ld. Counsel submitted that at present this amount has already been handed over to the Residential Welfare Association, which was formed later. Thus, we observe that this fund is a **pure deposit without any service element**. We also find that the said amount was shown as **current liability** in the balance sheet (Rs. 93,10,650/- in 2011-12 and Rs. 96,63,330/- in 2012-13) and not income. Thus, we observe that demand of service tax on such refundable deposit is not justified.

10.1. We observe that the Ld.Commissioner has upheld the demand of service tax under the category of **maintenance service** as defined under Section **65(105)(zzg)/65B(44)** of the Finance Act, 1994. However, we observe that the said amount does not belong to the appellant-assessee as it belongs to the owners' association, and the company only acts as a **custodian**. The practice of collecting such deposits for future maintenance and handing them over to **Resident Welfare Associations** is **well-established in the industry**. Being refundable and without service provision, it qualifies as a **non-taxable receipt**. Clarifications issued by CBEC vide Para 2.3.2 of the Service Tax Education Guide dated 20.06.2012, wherein it has been clarified as under:-

"Returnable deposit is in the nature of security and hence do not represent consideration for service."

10.2. We observe that this view has been held by the Tribunal, Allahabad in the case M/s Shipra Estate Ltd. vs Commissioner of Customs & Central Excise, Noida, wherein the Tribunal has observed as under:

4. In any case, we also note that the issue stands decided by precedent decisions of the Tribunal. Reference can be made to the Tribunal decision in the case of CCE & ST, Jaipur v. Sand Dunes Construction Pvt. Ltd. - 2018 (7) TMI-1383-CESTAT-New Delhi, whereby while taking note of the precedent decision of the Tribunal in the case of Kumar Beheray Rathi v. CCE, Pune - 2013 (12) TMI-269-CESTAT Mumbai = 2014 (34) S.T.R. 139 (Tri.-Mum.). It was held that the security

deposits collected by the Builder for providing maintenance to immovable property services would not be taxable under the category of „Management Maintenance or Repairs Services“. In fact, we note that Commissioner (Appeals) for the subsequent period in the appellant's own case has dropped the demand vide 5 Service Tax Appeal No.70217 of 2016 its Order-in-Appeal No. GZB/SVTAX/OOO/APPL-MRT/10/2017-18, dated 19-4-2018."

- 10.4. The same view has been taken 2014 (34) S.T.R. 139 (Tri.-Mumbai) Kumar Beheray Rathi V/s Commissioner Of Central Excise, Pune-III,
- 2019 (22) G.S.T.L. 450 (Tri. - All.) KDP Infrastructure Pvt. Ltd. vs Commr. OF C. EX. & S.T., Ghaziabad,
- 2018 (19) G.S.T.L. 277 (Tri. - All.) P.V.S. Construction Pvt. Ltd. vs Commr. OF C. EX. & S.T., Ghaziabad,

10.3. Thus, by following the ratio of the decisions cited supra, we hold that no service tax is payable by the appellant-assessee on this amount collected as refundable sinking fund. Accordingly, we hold that the demand confirmed on this count is set aside.

11. Regarding the demand of service tax of Rs.10,73,940/- confirmed on the Electrical and Generator Charges collected by the appellant-assessee, we observe that these charges were not received for any independent service. These charges were included as part of the total sale consideration for the flats. We observe that Para 3.2 of the

agreement for sale makes it clear that the construction includes buildings and common portions as per specifications in the fourth schedule. The fourth schedule includes electrical works and generator facilities for common areas, indicating that such works are integral to the overall construction of the housing complex. Therefore, these charges form part of the composite construction service and not a separate taxable service. Since the sale of flats was not taxable prior to 01.07.2010, there can be no service tax liability on such amounts.

11.1. In support of their claim that the "Electric and Generator Charges" were included as part of the total sale consideration for the flats., the appellant-assessee submitted two nos. of certificate issued by a Chartered Accountant wherein it is categorically mentioned that the "Electric and Generator Charges" are included as a part of the sale consideration of the Flats for F.Y 2011-12 & 2012-13. For ready reference, copies of the Chartered Accountant Certificate are extracted below:

A.K. MEHARIA & ASSOCIATES
Chartered Accountants

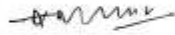
2, Garstin Place
5th Floor, Kolkata - 700001
PHONE/FAX: (033) 22434659/4660
E-mail: anilmeharia@vsnl.net

TO WHOM IT MAY CONCERN

This is to certify that the breakup of the figures stated under the head 'Sale of Flats and Others' in Note No. 18 of the Audited Balance Sheet as at 31st March, 2013 and Statement of Profit & Loss Account for the year ended 31st March, 2013 of M/s. A. B. Nirvan Builders Pvt. Ltd. of 5/1A, Hungerford Street, Kolkata - 700017 is as follows:

Sale of Flats:	Rs. 2,69,34,400.00
Sale of Car Parking:	Rs. 14,00,000.00
Sale of Servant Quarters:	Rs. 3,00,000.00
Electric & Generator charges for for aforesaid units	Rs. 3,52,680.00
	<u>Rs. 2,89,87,080.00</u>

For A. K. Meharia & Associates
Chartered Accountants
Firm Regn. No. 324666E



(A. K. Meharia)
Partner

Dated: 17th June, 2014



A.K. MEHARIA & ASSOCIATES
Chartered Accountants

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3rd Floor, Kolkata - 700017
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E-mail: anilmeheria@vsnl.net

TO WHOM IT MAY CONCERN

This is to certify that the breakup of the figures stated under the head 'Sale of Flats and Others' in Note No. 18 of the Audited Balance Sheet as at 31st March, 2012 and Statement of Profit & Loss Account for the year ended 31st March, 2012 of M/s. A. B. Nirvan Builders Pvt. Ltd. of 5/1A, Hungerford Street, Kolkata - 700017 is as follows:

Sale of Flats:	Rs. 67,35,11,765.17
Sale of Car Parking:	Rs. 3,57,50,000.00
Sale of Shops:	Rs. 85,88,900.00
Sale of Servant Quarters:	Rs. 39,20,000.00
Electric & Generator charges for for aforesaid units	Rs. 1,01,09,197.00
	<u>Rs. 73,18,79,862.17</u>

For A. K. Meharia & Associates
Chartered Accountants
Firm Regn. No. 324666E

(A. K. Meharia)
Partner

Dated: 17th June, 2014

11.2. Thus, by relying on the Certificate issued by the Chartered Accountant, we hold that the "Electric and Generator Charges" were included as part of the total sale consideration for the flats. Since the sale of flats was not taxable prior to 01.07.2010, we hold that the demand of service tax confirmed on this count is not sustainable and hence we set aside the same.

12. In respect of the demand of Service Tax of Rs. 22233/- on Miscellaneous Receipts, we observe that nowhere in the SCN or in the impugned order, any reason has been given for confirming the demand of service tax on this receipt. From the records, we observe that this receipts involves amount received from flat owners for fitting of electric meters and

other miscellaneous supply of materials. The appellant has purchased electrical fittings on behalf of flat owners and the amount for the same was reimbursed to them by the flat owners. In support of this claim, the appellant submitted some sample copies of tax invoice for purchase of electric meter on which VAT has been charged by the respective vendors in this regard in the F.Y. 2009-2010 & 2010-2011. Thus, we observe that the appellant-assessee has not provided any service to the flat owners in this regard. Accordingly, we hold that the demand of service tax confirmed on this ground is not sustainable.

13. Regarding the demand of Service Tax of Rs. 20,230/- on Advance Maintenance Deposits, we observe that during the course of investigation by the DGCEI, the appellant-assessee came to know that maintenance service provided by them to flat owners is a taxable service. Thereafter, they opted for VCES scheme and declared and paid service tax on the total expenses incurred on account of maintenance. We find that the appellant-assessee has paid service tax amounting to Rs. 5,40,728/- on account of maintenance service under VCES. We find that this demand of Rs. 20,230/- is on account of advance maintenance deposits of Rs. 1,58,706/- received during F.Y. 2012-13 whereas applicable service tax on this was already paid under VCES. In view of the aforesaid factual position, we hold that this demand of Rs. 20,230/- confirmed in the impugned order is not tenable and hence we set aside the same.

14. Thus, we hold that the entire demand of service tax of Rs. 21,18,991/- confirmed in the

impugned order is not sustainable and hence we set aside the same. As the demand of service tax is not sustainable, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

15. Regarding the issues on which demand has been dropped, we observe that the department has filed appeal in respect of an amount of Rs. 98,21,758/-. Out of which, demand of Rs. 44,91,391/-has been dropped in the impugned order, on account Calculation Error on the amount received as advances from customers. The appellant-assessee claimed that the demand in the show cause notice has been incorrectly calculated on cumulative closing balances of various customer advance accounts from FY 2008-09 to 2012-13, totalling to Rs.8,87,87,268. However, the actual total advance received during this period, including the opening balance as on 01.04.2008, was only Rs.4,42,22,416/-, as evidenced by the ledgers. This discrepancy shows that the demand has been erroneously calculated on an excess amount of Rs.4,25,12,066/-. We observe that the Ld. adjudicating authority has accepted the incorrect method of calculation adopted by the department and dropped the service tax demand raised in the Notice on this count. We find that in para 6.5.3 of the impugned order, the Ld. Adjudicating Authority has acknowledged that closing balances had been used to determine the tax liability instead of actual advances received during the financial years in question. Thus, we do not find any infirmity in dropping the demand by the Ld. adjudicating authority and hence we uphold the same.

16. Regarding the remaining dropped demand of service tax of Rs. 53,30,367/- on the amount received as 'advances from customers', we observe that this amount has been shown as 'details of advances' standing as on 01.04.2008 to 31.03.2013. It has been alleged in the Show Cause Notice that the advances received from customers for the sale of flats, reflected under "Other Advances" were actually payments for services like electrical installation, maintenance, sinking fund, service charges, etc., and hence taxable under "Management, Maintenance & Repair Service." The appellant submits that these advances were wrongly classified and should have been grouped under "Advance against agreement" as they were payments toward the sale of flats. During the disputed period, we find that the appellant-assessee was engaged in residential property development and sale. Since both Club Town Residency and Koyla Vihar projects received completion certificates before 1st July 2010, we hold that the advances received towards these flats are not taxable under the service tax regime, as per prevailing legal provisions. We find that the Ld. Adjudicating Authority has acknowledged in para 6.5.3 of the Order-in-Original that the advances were received for the sale of flats and not for any taxable service. He has clearly held that the activities, if taxable, would fall under "Construction of Residential Complex Service" and not "Management, Maintenance or Repair Services." Moreover, since the projects were completed before 01.07.2010, these transactions are outside the scope of taxable service. We do not find any infirmity in the findings of the Ld. adjudicating authority while dropping this demand of Rs. 53,30,367/-.

Accordingly, we uphold the dropping of the demand on this count by the adjudicating authority.

17. In view of the above, we find that the appeal filed by the Revenue against dropping of the demand of service tax of Rs. 98,21,758/-, does not merit consideration and accordingly, we reject the same.

18. In view of the above findings, we pass the following order:

(i) We set aside the demand of service tax of Rs. 21,18,991/- confirmed in the impugned order along with interest. The penalty imposed on this demand is also set aside. The appellant is eligible for consequential relief, if any, as per law.

(ii) The appeal filed by the Revenue is rejected.

(iii) The appeals are disposed of on the above terms.

(Order Pronounced in Open court on 22.09.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP