

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51492 of 2019

[Arising out of Order-in-Appeal No. 193/ST/DLH/2018 dated 18.06.2018 passed by the Commissioner of CGST & Central Excise (Appeals-I), New Delhi]

**Principal Commissioner of Central
Excise, Customs, Goods and Service Tax,
Delhi East**

...Appellant

Room No. 134, Central Revenue Building,
I.P. Estate, East Delhi, New Delhi - 110002

VERSUS

M/s. AGC Reality Private Ltd.

...Respondent

403, 4th floor, Sachdeva Corporate Tower,
Plot No. 17, Karkardooma Community Centre,
Vikas Marg Extension, Delhi – 110092)

APPEARANCE:

Shri Rakesh Kumar, Authorized Representative for the Appellant
Shri A.K. Batra, Chatered Accountant for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 12.05.2026
DATE OF DECISION: **23.10.2026**

FINAL ORDER NO. 51623/2026

DR. RACHNA GUPTA

Revenue has filed this appeal to assail the Order dated 18.6.2018 passed by the Commissioner (Appeals) setting aside the order dated 12.6.2018 passed by the Additional Commissioner in which he decided the proposals made in the Show Cause Notice (SCN) dated 10.6.2015 covering the period 2010-11 to 2013-14 and the follow up Statement of Demand dated 19.5.2016 (covering the period 2014-15) issued to M/s. AGC Realty, the respondent herein. With respect to the first SCN, the Additional Commissioner had confirmed demand of service tax of Rs. 50,77,00/- for the period June 2011 to Jan 2014 and service tax of Rs. 50,49,750/- for the

period 1.7.2010 to 31.3.2014 under the proviso to section 73(1) of the Finance Act, 1994 (the Act) on the amounts said to have been received by the appellant in cash. She appropriated an amount of Rs. 25,00,000/- paid by the respondent during investigation, confirmed demand of appropriate interest and imposed penalties. With respect to the follow up Statement of Demand, the Additional Commissioner confirmed demand of service tax of Rs. 11,36,830/- along with interest and penalties.

1.1 On appeal by the respondent herein, the Commissioner (Appeals) set aside the order of the Additional Commissioner holding that the demand was unsustainable in the absence of any record/evidence and statements of buyers, examination of bank details, balance sheets, cash transaction to say the least. He further said that the statements of the Assistant Accounts Manager cannot be the only basis to work out details on some hypothesis which is not even put to any test for verification.

1.2 M/s. AGC Reality Pvt. Ltd., the respondent-assessee were engaged in providing taxable services of construction of residential complex and thus were registered with the service tax Commissionerate Delhi-I. Intelligence received in the Directorate General of Central Excise Intelligence Hqrs. New Delhi (hereinafter referred to as 'DGCEI') indicated that respondent-assessee were collecting a part of the amount in cash from their customers against booking of residential flats in their project 'Homes-121', Noida (UP), but were not accounting for the same in their statutory records and were not paying service tax on such un-accounted cash receipts. The intelligence further indicated that the said details of un-accounted

cash receipts were maintained by Shri Inder Kumar Gupta, an employee of respondent-assessee, in their office.

1.3 On the basis of above intelligence, the office of the respondent-assessee was searched by the officers of DGCEI on 21.01.2014. Six pen drives were recovered from the possession of Shri Inder Kumar Gupta and were examined at the office of respondent-assessee in the presence of said Shri Inder Kumar Gupta under Panchnama dated 21.01.2014. Print outs of the relevant pages were taken out in his presence only on which Shri Inder Kumar Gupta put his dated signature. Regarding the data available in the pen drives, Shri Inder Kumar Gupta stated that he was working as Assistant manager (Accounts) with respondent-assessee and was looking after accounts and administration work of the company.

1.4 Scrutiny of the data retrieved on 21.01.2014 and 15.10.2014 from the pen drives recovered from the possession of Shri Inder Kumar Gupta, revealed that respondent-assessee had collected an amount of Rs.17,47,15,000/- in cash from various customers of their residential project "Homes-121" at Noida during the period from June, 2011 to January, 2014 (up to 20.01.2024) towards the basic cost of residential flats and the said amount of receipt in cash was not accounted for nor reflected in their books of account so as to avoid the payment of service tax. Shri Inder Kumar Gupta further confirmed that the amount mentioned against the flat no. and the name of the buyers, was rupees in Lacs. For example, where the amount 2.00 was mentioned, it was actually Rs.2,00,000/- and likewise. He admitted the liability of service tax on this amount and an amount of Rs.25.00 Lac was voluntarily deposited by respondent-

assessee towards their anticipated service tax liability vide e-receipt dated 24.01.2014 and the same was intimated to DGCEI, New Delhi vide their letter dated 27.01.2014. Shri Inder Kumar Gupta further confirmed that respondent-assessee had collected additional charges towards PLC-Preferential Location charges (corner, location, park, floor and Road), car parking, EEC (external electrification charges), FFG (firefighting charges), club membership and power backup from some of the customers and were paying service tax on all the said additional charges at the full rate i.e. 12.36% or 10.30%, as applicable.

1.5 In order to arrive at the service tax liability on the alleged unaccounted cash amounting to Rs.17,47,15,000/-, the details submitted by respondent-assessee vide their letter dated 26.12.2014 related to customer wise booking of 1601 No. of flats, under different payment plans, were scrutinized. For the purpose of arriving at the basic price, 841 flats sold during the period 01.07.2010 to 31.03.2014 were segregated and grouped under three separate categories on the basis of payment plans viz. (i) Down Payment Plan (466 flats), (ii) Flexi Payment plan (257 Flats) and (iii) Construction Link Payment plan (78 Flats). Three separate charts of Down Payment plan, Flexi Payment plan and Construction link Payment plan were prepared on the basis of details provided by respondent-assessee and summary charts as discussed above showing the customer wise details of booking of flat, their basis price, differential price per sq. feet, differential value on which service tax was not paid and amount of service tax evaded. The amount of service tax of Rs.50,49,750/- evaded by respondent-assessee was in addition to

the amount of service tax of Rs.50,77,000/- evaded during June, 2011 to January, 2014 on the unaccounted cash receipt of Rs.17,47,15,000/- was proposed to be recovered vide Show Cause Notice No. 574/04/2014 dated 10.06.2015. The proposal was confirmed vide Order-in-Original No. 05-06/2018-19 dated 12.06.2018. The appeal against the said order was filed by the respondent-assessee. Commissioner (Appeals) vide Order-in-Appeal No. 193/2018 dated 12.03.2019 set aside the impugned order and allowed the appeal of the respondent. Being aggrieved of the said order, department has filed the present appeal before this Tribunal.

2. Shri Rakesh Kumar, learned Authorized Representative for the department and Shri A.K. Batra, learned Chartered Accountant for the respondent.

3. Learned Departmental Representative has submitted that the present case was initiated by DGCEI Hqrs., New Delhi, observing that M/s. AGC Reality Pvt. Ltd. was collecting a part of the payment in cash from customers against sale of residential flats in their 'Homes-121' project. This cash amount was not accounted for in statutory records, and service tax was not paid on these un-accounted receipts, indicating an intention to evade tax. A search operation recovered documents, electronic gadgets, and six pen drives from Shri Inder Kumar Gupta, an employee of the assessee. Scrutiny of the retrieved data revealed that the assessee had collected Rs.17,47,15,000/- in cash from various customers towards the basic cost of residential flats, which was not reflected in their books of account. It was alleged that respondent also sold a number of flats at abnormally low prices which varied from customer to customer,

even under the same payment plan and period. The respondent in the statements admitted reading the cash payment and for not including the said amount in the taxable value. The Commissioner (Appeals) failed to appreciate the overwhelming evidence, including:

(i) The recovery of pen drives containing details of the un-accounted cash receipts.

(ii) The fact that the details of un-accounted cash were maintained by Shri Inder Kumar Gupta (Asstt. Manager), a fact not disputed by the assessee.

(iii) The admission by Shri Inder Kumar Gupta that they accepted cash when customers insisted, leading to a reduced basis price in the agreement.

(iv) The Director of the company, Shri Deepak Kapoor, agreeing with the contents of Shri Inder Kumar Gupta's Statements.

(v) The fact that the statements given by the respondents were never retracted, implying they were voluntary and not under duress or coercion.

3.1 It is further submitted that the assessee voluntarily paid an amount of Rs.25,00,000/- towards the partial discharge of their service tax liability, which itself implies an admission of their service tax liability on the unaccounted cash received from flat buyers.

3.2 **Judicial Precedent has been ignored:**

The Hon'ble High Court of Gujarat, in the case of **Tulip Lamkraft Pvt. Ltd. Vs. Commissioner of Central Excise**¹, held that when there is overwhelming evidence of unretracted unequivocal confessional statements and matching entries in records (like diaries/pen drives), the failure of authorities to produce additional evidence (like extra consumption of electricity or source of raw material) would pale into insignificance and not vitiate the order. This principle applies directly to the instant case where the Order-in-Appeal ignored the unretracted admissions.

3.3 **Failure to Appreciate Prima Facie Case:**

The Commissioner (Appeals) erred in demanding corroborative evidence such as bank details, balance sheets, and buyer statement, when the assessee's own employee and Director had admitted to the transactions and maintained separate records.

3.4 In view of the above it is prayed that the impugned order Order-in-Appeal No. 193/2018 dated 12.03.2019 passed by the Commissioner (Appeals) deserves to be set aside as it has brushed aside the fact of admission by the Director and his employee keeping the record of such transaction in cash and the order of the adjudicating authority has no infirmity and the same has to be uphold. Learned Departmental Representative has relied upon the following decisions:

1 2015(316) ELT 417(Guj.)

(i) Commissioner of Customs Preventive Kolkata Vs. Shri Anil Kumar Soni and Shri Anil Kumar Gaur reported as 2026 (4) TMI 85 – Calcutta High Court

(ii) Amad Noormamad Bakali Vs. State of Gujarat reported as 2011 (274) ELT 17 (Guj.)

(iii) Amad Noormamad Bakali Vs. State of Gujarat reported as 2026 (2) TMI 1116 – Supreme Court

(iv) Commissioner of CGST and Central Excise, Howrah Commissionerate Vs. M/s. Ashirwad Foundries Private Limited and Anothers reported as 2022 (12) TMI 773

(v) SC Order Ashirwad Foundries Private Limited Vs. Commissioner of CGST and Central Excise reported as 2025 (11) TMI 253 – SC

(vi) Additional Director General Adjudication, Directorate of Revenue Intelligence Vs. Suresh Kumar and Co. Impex Pvt. Ltd. & Ors. reported as 2025 (9) TMI 76

(vii) Surjeet Singh Chhabra Vs. Union of India reported as 1997 (89) ELT 646 (SC)

(viii) Sh. T.N. Malhotra S.R. Bristle Products Pvt. Ltd. Vs. Pr. Commissioner of Customs, New Delhi reported as 2024 (6) TMI 202 – CESTAT New Delhi

(ix) J.C. Shah, V. Ramaswami, G.K. Mtter, K.S. Hegde and A.N. Grover, J.J. Romesh Chandra Mehta Vs. State of West Bengal reported as 1999 (110) ELT 324 (SC)

(x) Naresh J. Sukhawani Vs. Union of India reported as 1996 (83) ELT 258 (SC)

(xi) M/s. Laxmi Enterprises Vs. CC (Prev.), New Delhi reported as 2018 (2) TMI 420 – CESTAT New Delhi

(xii) Laxmi Enterprises Vs. Commissioner reported as 2020 (1) TMI 1310 – SC

(xiii) Commissioner of C.Ex., Madras Vs. Systems & Components reported as 2004 (165) ELT 136 (SC)

(xiv) Commr. of Cus. (Import), ICD, TKD, New Delhi Vs. Sodagar Knitwear reported as 2018 (362) ELT 819 (Tri. Delhi) confirmed by Hon'ble Supreme Court

(xv) DJP International Vs. Commissioner of Customs (ICD), New Delhi reported as 2017 (350) ELT 294 (Tri.-Del.) confirmed by Hon'ble Supreme Court

(xvi) Union of India Vs. Dharmendra Textiles reported as 2008 (231) ELT 3 (SC)

(xvii) Lieutenant Colonel Ganesan S. (Retd.) Vs. Commr. of Cus., Chennai reported as 2021 (376) ELT 561 (Mad.)

With these submissions, the impugned order is prayed to be set aside and the appeal filed by the department is prayed to be allowed.

4. On the other hand, learned Chartered Accountant for the respondent-assessee has submitted that the department undertook an exercise of analyzing approximately 1601 flat transactions and

segregated them into three categories, namely down payment plan, flexi payment plan and construction linked payment plan. Based on this analysis, the Department identified the price range within which the maximum number of flats were sold in a given year and treated the lower end of such price range as the 'correct' value for all transactions in that category. The difference between such assumed value and the declared transaction value was treated as suppressed consideration. By adopting this extrapolation methodology, the department computed a differential value of Rs.17,48,08,349/- and raised an additional service tax demand of Rs.50,49,750/-. The allegation that the respondent received unaccounted cash amounting to Rs.17.47 crore is entirely unsubstantiated and unsupported by any credible evidence. It is an admitted position that no cash was recovered during the search; no buyer statement confirming payment of cash has been recorded; no money trail has been established linking any alleged cash receipt to the respondent. The entire allegation is based merely on certain electronic data and printouts, which has neither been authenticated nor corroborated by independent evidence.

4.1 It is further submitted that the respondent produced supporting evidence vis-à-vis affidavits signed by the buyers that no cash payments were made, builder buyer agreement showing the details of discounts offered to the buyers. Thus there is no infirmity when the Commissioner (Appeals), in Para 17 and Para 19, has held that in absence of corroborative evidence, such allegations cannot be sustained.

4.2 The department has relied upon certain loose sheets and pen drive data and has arbitrarily interpreted the figures contained therein as representing amounts in 'lakhs'. It is submitted that such documents, in absence of any corroboration, are in the nature of 'dumb documents' and cannot be relied upon for determining tax liability. No attempt has been made by the department to correlate the entries in such documents with actual transactions or receipts. The Commissioner (Appeals), in Para 13, has rightly rejected the reliance placed on such unverified material. Thus, demand based on assumptions, presumption and extrapolation is unsustainable. The Commissioner (Appeals) in para 18, 19 and 20 of the Order-in-Appeal, has categorically held that such estimation based on assumptions and extrapolation cannot form the basis of demand.

4.3 Price variation is inherent in the real estate sector and cannot be equated with suppression of value. The Commissioner (Appeals), in paras 16 and 18, has rightly accepted this explanation and held that price variation does not establish undervaluation. Income Tax proceedings on identical allegations decided in favour of the respondent. Learned Chartered Accountant for the appellant has submitted that identical allegations of alleged cash receipts were examined in proceedings under the Income Tax Act for Assessment Years 2012-13 to 2014-15. The additions made by the Assessing Officer were solely based on the DGCEI report and were deleted by the Commissioner of Income Tax (Appeals) and upheld by the Tribunal. The Hon'ble Delhi High Court has dismissed the appeal filed by the Revenue and held that the additions were based solely on the DGCEI report and such material was not incriminating in nature.

Accordingly, the department cannot be permitted to re-agitate the same issue, and the present demand is liable to be set aside on this ground alone.

4.4 The department has invoked the extended period under the proviso to Section 73(1) without establishing suppression or intent to evade tax. All transactions were duly recorded in the books of accounts and disclosed in returns. To support his submissions, learned Chartered Accountant has relied upon the following decisions:

(i) Mekala Raja Plywoods Pvt. Ltd. Vs. Commissioner of C. Ex., Vapi reported as 2014 (308) ELT 90 (Tri.-Ahmd.)

(ii) Commissioner of Central Excise Vs. Omkar Texile Mills Pvt. Ltd. reported as 2010 (259) ELT 687 (Guj.)

(iii) Super Forgings & Steel Ltd. Vs. Commissioner of Central Excise, Kolkata-IV reported as (2024) 17 Centax 34 (Tri.-Cal) dated 09.01.2024

(iv) ALPS Container Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-V reported as 2018 (364) ELT 103 (Tri.-Mumbai)

(v) Commissioner of Central Excise & Customs Vs. Swati Polyester reported as 2015 (321) ELT 423 (Guj.)

(vi) J.P. Iscon Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad-I reported as 2022 (63) GSTL 64 (Tri.-Ahmd.)

(vii) Bhandari Caterers Vs. Pr. Commr. of Cus. C.Ex. & S.T., Indore reported as 2019 (29) GSTL 489 (Tri.-Del.)

(viii) Agrawal Builders and Colonizers Vs. Commissioner of Central Goods, Service Tax, Central Excise and Customs, Bhopal reported as 2025 (5) TMI 1831 – CESTAT New Delhi

(ix) Commissioner of CGST & Central Excise, Jaipur I Vs. M/s. Lotus Cons Build Technorate Pvt. Ltd. reported as 2025 (1) TMI 788 – CESTAT New Delhi

(x) Neptune Infrastructure Pvt. Ltd. Vs. Department of Income Tax dated 19.10.2011

With these submissions, the appeal filed by the department is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, it is observed and held as follows:

5.1 This case was initiated by DGCEI Hqrs., New Delhi, on receiving information that M/s. AGC Reality Pvt. Ltd. was collecting a part of the payment in cash from customers of residential flats in their 'Homes-121' project which was not being accounted for in the statutory records, and service tax was not paid on these unaccounted receipts, indicating an intention to evade tax. A search operation recovered documents, electronic gadgets, and six pen drives from Shri Inder Kumar Gupta, the Assistant Manager (Accounts) of the assessee. **There is no dispute that the pen drives were recovered under a Panchnama from the respondent assessee.**

5.2 The pen drives had several Excel sheets and files which could, evidently have been explained by Shri Inder Kumar Gupta and he did

so in his statement. Printouts of the files were also taken and were signed by Shri Gupta.

5.3 Scrutiny of the retrieved data revealed that the assessee had collected Rs.17,47,15,000/- in cash from various customers towards the basic cost of residential flats, which was not reflected in their books of account. It was also found that respondent had sold a number of flats at abnormally low prices which varied from customer to customer, even under the same payment plan and period.

5.4 In his statement, Shri Inder Kumar Gupta said that the Director of the company was Shri Deepak Kapoor and that he (Inder Kumar Gupta) reports to Shri Deepak Kapoor and to the chartered accountant Shri Navratan Tater. Statement of Shri Deepak Kapoor was also recorded in which he affirmed the statement of Shri Inder Kumar Gupta. The statements recorded during the investigation and relied upon the SCN were as follows:

- a) Statement of Shri Inder Kumar Gupta on 21.1.2014 (RUD-2) in which he explained the contents of the pen drives and signed printouts of the files of the pen drive (RUD-3).
- b) Statement of Shri Inder Kumar Gupta on 19.12.2014 (RUD-6) in which he affirmed his earlier statement dated 21.1.2014.
- c) Statement of Shri Deepak Kapoor on 19.12.2014 (RUD-7) in which he agreed with the contents of statement of Shri Inder Kumar Gupta.

5.5 The SCN was issued on 10.6.2015. The Commissioner (Appeals) recorded that the assessee had retracted the statements in the reply to the SCN. Learned counsel for the respondent has, in his synopsis submitted that 'the statements were recorded under coercion and were retracted at the earliest opportunity'. We find this finding of the Commissioner (Appeals) and the submission of the learned counsel are not correct. The details of the statements listed above would show that the first statement of Shri Inder Kumar Gupta was recorded on 21.1.2014. If it was recorded under coercion, it was incumbent on him to have retracted it immediately thereafter. He should have also explained as to what the files in the pen drives pertained to because they were recovered from him and he was maintaining the accounts and therefore, had the exclusive knowledge of the contents of the files in the pen drives. Not only did he not retract the statement immediately, he reaffirmed the statement in his subsequent statement recorded after eleven months on 19.12.2014. In his statement dated 21.1.2014, Shri Inder Kumar Gupta also said that Shri Deepak Kapoor was the Director of the respondent. Shri Deepak Kapoor has also in his statement dated 19.12.2014, confirmed the statement of Shri Inder Kumar Gupta.

5.6 The Commissioner (Appeals) recorded that the statements were retracted in the reply to the SCN. Needless to say that the reply could have only been filed after the SCN was issued on 10.6.2015, i.e., after six months of the second statement. Any retraction in such reply cannot be called anything other than an afterthought. The Commissioner (Appeals) committed an error in taking cognizance of such afterthought as a retraction.

5.7 It must also be noted that as per section 106 of the Indian Evidence Act, the burden of proving a fact within the exclusive knowledge of a person will rest on such person. It reads as follows:

106. Burden of proving fact especially within knowledge.

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him. (b) A is charged with travelling in a railway without a ticket. The burden of proving that he had a ticket is on him.

5.8 It is undisputed that the pen drives were recovered from the respondent and Shri Inder Kumar Gupta who was maintaining the accounts. So, he had exclusive knowledge of the contents of the files in the pen-drives and he explained them in his statement dated 21.1.2014. He re-affirmed the statement in his subsequent statement eleven months later. The Director Shri Deepak Kapoor also affirmed his statement. These statements made by persons who had exclusive knowledge of the content of the pen drives was wrongly ignored by the Commissioner (Appeals).

5.9 The other reason for the Commissioner (Appeals) to set aside the order of the Additional Commissioner is that the cash receipts were not recorded in the books of accounts, etc. and that there was no other evidence. We note that if the cash is recorded in the books of accounts and bank statements, it will not be a cash transaction at all. Cash was collected and separate records were maintained flat wise. These records were in the pen drives and the person who maintained them explained the files and re-affirmed them after eleven months and the Director of the firm also affirmed the statement.

5.10 The Commissioner (Appeals) statement that there was no other evidence is also not correct because the printouts of the pen drive were taken and they were also signed by Shri Inder Kumar Gupta.

5.11 As per section 14 of the Central Excise Act, 1944 as made applicable to service tax matters by section 83 of the Finance Act, 1994, a central excise officer is empowered to summon any person either give to evidence or to produce documents specified under the summon which are under the possession or control of the summoned person. A duty is cast upon summoned person to the state the truth or produces the document or other things as required by the Central Excise Officers. The duty is to tell the truth is not fettered by any limitation or prohibition described in law of evidence. So once the maker of the statement made the statement, it has to be red in the proceeding before the department or the appellate stage. The only rider is that the statement given is voluntary and true. In fact the officers when record statement under section 14 usually explains the maker of the statement regarding voluntariness and further explain that it may be read against the maker of the statement during the departmental adjudication and prosecution. The cardinal principle is the statement has to be voluntary and it has to be true and if either of the elements is missing then the statement has to be discarded or proved otherwise.

5.14 Though the statement recorded under Section 14 of Central Excise Act is the part of evidence only if it is voluntary and free from any sought of pressure and though the appellant herein had retracted the said statement hitting the veracity thereof. Hon'ble Apex Court in the case of **Vinod Solanki Vs. Union of India reported 2009**

(233) ELT 157 (SC) has held that the evidences brought on record by way of confession which stood retracted, if substantially corroborated by other independent and cogent evidences, the relevance thereupon can be placed. In the present case, the respondent appeared before the authorities an year after the initial seizure and voluntarily reaffirmed his statement. The silence of respondent for over two years, followed by retraction, marks it as a “calculated afterthought” and a strategic ruse.

5.15 Hon’ble court also observed as below:

"We must also noticed that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the evidence basis whereof alone a judgment of conviction and sentence has been recorded. See Ponadithan Vs. Narcotics Control Bureau Madras (1999) 6 SCC 1.

5.16 Hon’ble Apex Court in **K I PAVUNNY VS. Assistant Collector (HQ) Central Excise Collectorate, Cochin reported 1997 (3) SCC 721** Hon’ble Supreme Court while holding that for a retraction to be legally potent, it must be contemporaneous, has recorded as below:

"It is the duty of the court to look into the facts and circumstances of each case to find whether the confession was voluntary. If the court is satisfied that the confession was voluntary and true, it can form the basis of conviction."

5.17. As already observed above that the retraction of the appellant is a delayed act and is an afterthought. We believe that the earlier statements about receiving cash from the buyers of the flat in the statement of Shri Inder Kumar Garg recorded under Section 14 of the Central Excise Act is the cogent evidence proving the allegations leveled by the appellants.

5.18 Further, it is also the settled principle of Law of Evidence that documentary evidence prevails over the oral one. In this case, in addition to the statement of Shjri Inder Kumar Gupta there are the print out extracted from the pen drives recovered from said Shri Inder Kumar Gupta which got retrieved in presence of Shri Inder Kumar Gupta himself in the office of the respondent-assessee. Those documents sufficiently prove the allegations of show cause notice as was held by the Additional Commissioner.

6. In light of the above discussion, we hold that Commissioner (Appeals) has committed an error while setting aside the order confirming the demand of service tax. The impugned order is therefore set aside and the order of the Additional Commissioner is therefore, restored. Consequent thereto, the appeal of the department is hereby allowed.

[Order pronounced in the open court on **23.10.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

HK