आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
सत्यमेव जयते
07926305065- टेलेफैक्स07926305136

DIN:20230164SW00000086E3

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1279/2022-APPEAL / 3557 – 58

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-123/2022-23**
दिनाँक Date : **20-01-2023** जारी करने की तारीख Date of Issue 24.01.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **65/ADC/GB/2021-22** दिनाँक: **28.02.2022/01.03.2022**, issued by Joint/Additional Commissioner, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s. Mahavir Developers,
   19, Jalvihar Bunglows, Sterling City,
   Bopal,Ahmedabad-380058

2. Respondent
   The Joint Commissioner,CGST, Ahmedabad North , Custom House, 1st Floor, Navrangpura, Ahmedabad - 380009

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए .गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

M/s. Mahavir Developers, 19, Jalvihar Bunglows, Sterling City, Bopal, Ahmedabad-380058 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in Original No.65/ADC/GB/2021-22 dated 28.02.2022/ 01.03.2022 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were holding Service Tax Registration No.AAZFM1544JSD001.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, it was noticed that the 'Sales/Gross Receipts' from services declared in ITR of the appellant were not tallying with the 'Gross Value of Service' declared in their ST-3 Returns. The appellant had declared less taxable value amounting to Rs.4,76,00,000/- in their ST-3 Return for F.Y. 2015-16 & F.Y. 2016-17 as compared to the income declared in their Income Tax Return (ITR) / Form 26AS filed under the Income Tax Act. Letters were subsequently issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16 & F.Y. 2016-17. However, neither any documents nor any reply was submitted by them for non-payment of service tax on such receipts.

2.1 Therefore, a Show Cause Notice (SCN) No.STC/15-166/OA/2020 dated 23.10.2020 was issued to the appellant proposing recovery of service tax demand of Rs.68,67,353/- not paid on the differential value of income amounting to Rs.4,76,00,000/- received during the F.Y. 2015-16 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Sections 76, 77 and penalty under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.68,67,353/- was confirmed alongwith interest. Penalty of Rs.10,000/- was imposed under Section 77 and equivalent penalty of Rs.68,67,353/- was also imposed under Section 78.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds elaborated below:-

- The appellant are engaged in 'Construction of Residential Units' and had paid service tax on the advances received from members before completion certificate dated 11.02.2015. The tax was paid in cash at applicable rate after availing abatement of 75% as per Notification No.26/2012-ST, on the advances received.
- The advances received towards booking was shown under 'Current Liabilities' as advances and when the full payment was made, the appellant executed the sale deed and the whole amount was transferred to sales account in profit & loss account. There is always a possibility that the advance was received in previous year and sale deed was executed in the next year. Since service tax has been discharged on advance, then again they are not liable to pay tax on the whole amount. It is this difference on which the present demand has been raised.

- The abatement of 75% in terms of Notification No. 26/2012-ST is available to them as the booking amount was received prior to BU permission. Further, where entire consideration is received after the BU permission, no tax is leviable as envisaged in Section 66E(b) of the F.A., 1994.
- Demand based on the reconciliation of ITR data and ST-3 Returns with the financial statement is not sustainable. They provided reconciliation statement to bifurcate the advance received prior and after the completion certificate for respective period. They also claimed that for 3 bungalows the booking amount received was returned on cancellation of booking. In some cases the tax was paid on advance receipt and on sale deed value but the same was returned however no effect was given to the same. The placed reliance on following decisions:-
  - Regional Manager, Tobacco Board- 2013 (31) STR 673 –Tri.Bang
  - Anvil Capital Management- 2010 (20) STR 789- Tri.-Mum
  - Purni Ads Pvt. Ltd.-2010 (19) STR-242 (Tri-Ahmd)
  - Bhogilala Chhagulal & Sons- 2013 (30) STR-62 (Tri-Ahmd)

- As the appellant was filing ITR and ST-3 Returns, suppression cannot be alleged. Hence, penalty under Section 78 also cannot be imposed. They placed reliance on the decision of Steel Cast Ltd- 2011(21) STR 500 (Guj).
- Penalty under Section 77 is also not imposable as there is no short payment and if case of any non-payment was under the bonafide belief and without any intent to evade payment of taxes. They placed on cases of Hindustan Steel Ltd- AIR1970 (SC) 253; Kellner Pharmaceuticals Ltd- 1985 (20) ELT 80. Since the dispute is arising out of interpretation of law, the malfide intention is not proved. Geonka Wollen Mills – 2001(135) ELT 873; Bhilwara Spinners- 2001 (129) ELT 458.

3.1 Further, on going through the appeal memorandum, it is noticed that the impugned order was issued on 01.03.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 10.05.2022 i.e. after a delay of 10 days. The appellant have on 25.05.2022, filed a Miscellaneous Application seeking condonation of delay stating that they were not having GSTN number and to make pre-deposit they had to generate temporary registration number which took some time hence the delay. They requested to condone the delay as the delay was within the condonable period.

4. Personal hearing in the matter was held on 06.01.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Miscellaneous Application seeking condonation of delay and stated that the appeal have been filed as per extension of time limit in filing appeal allowed by the Hon'ble Supreme Court's Order. He also reiterated the submissions made in the appeal memorandum and submitted ST-3 Returns, B.U. Permission, and other documents during the hearing.

5. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended

to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 10 days and take up the appeal for decision on merits.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.68,67,353/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-2016 to F.Y. 2016-17.

7. On examination of the SCN, it is observed that the total service tax liability of Rs.68,67,353/- for the F.Y. 2015-16 to F.Y. 2016-17 was ascertained on reconciliation of the income shown in the ST-3 Returns filed by the appellant vis a vis the amount shown as 'Sales of Services' in their ITR filed with the Income Tax department. It is observed that the appellant are providing 'Construction Services in respect of Residential Units'. Regarding non-payment of service tax on the differential value of income reflected in the ITR, they have claimed that they had paid service tax on the advances received from members before Completion Certificate dated 11.02.2015 and where consideration is received after the B.U permission, no tax is leviable as per Section 66E(b) of the F.A., 1994. Further, they also claimed to have availed the benefit of exemption available under Notification No.26/2012-ST dated 20.06.2012 and paid tax on 25% of value after availing abatement of 75%, on the advance received, as no credit was taken and entire tax liability was discharged through cash ledger. The adjudicating authority has upheld the demand and denied the benefit of the exemption to the appellant on the findings that the appellant have not produced the B.U. Permission issued by the competent authority and the Tax Bill dated 28.01.2015, issued by the "Ghuma Gram Panchayat" cannot be considered a valid document to arrive at a conclusion that the amount or income received by the appellant was prior to issuance of completion certificate.

7.1 For better appropriation of the issue, I will examine the relevant Section 66E (b) of the Finance Act, 1994 and relevant text of Notification No.26/2012-ST, which are reproduced below:-

> ***SECTION [66E. Declared services.*** *— The following shall constitute declared services, namely :—*
>
> *(a) renting of immovable property*
>
> *(b)* ***construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.***
>
> ***Explanation.*** *— For the purposes of this clause,—*
>
> *(I) the expression* ***"competent authority"*** *means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :—*
>
> *(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or*

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

It is observed that Section 66E (b) attracts the service tax liability with reference to Construction of Residential Complex. From the above definition, it is clear that 'construction of complex' is a taxable service except where the entire consideration is received after issuance of 'Completion Certificate' from the competent authority. The definition of "competent authority" is also prescribed in Section 66E of Finance Act, 1994 which has to be followed.

7.2 Further, abatement on service tax liability is provided in Notification No. 26/2012-S.T., dated 20-6-2012.

TABLE

Sl.No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority.	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver.

C. For the purposes of exemption at Serial number 12 -

The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, if any; and

(ii) the value added tax or sales tax, if any, levied thereon :

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

In terms of above Entry in the Notification No.26/2012-ST dated 20.06.2012, wherever the amount is received prior to issuance of completion certificate and if the CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004 and the value of land is included in the amount charged from the service receiver, then the service provider shall discharge the tax liability only on 25% of the value. In the instant case, the adjudicating authority had denied the benefit of above notification as the appellant has failed to produce the B.U. Permission /Completion certificate.

7.3 During the personal hearing held before me, the appellant have stated to have submitted the B.U. Permission, but on scrutiny of the documents, it is noticed that document submitted is the copy of property tax bills raised by Ghuma Gram Panchayat and not the B.U. Permission issued by any Competent Authority, as claimed by the appellant. Hence, the same cannot be considered as valid document. Nevertheless, the

onus to prove and show the satisfaction of the conditions of the Notification is on the person who claims the benefit of the same. The Hon'ble Apex Court has held that exemption Notification have to be read strictly and burden is on the assessee to show that they fall within the four corners of the exemption Notification. I, therefore, concur with the findings of the adjudicating authority that in the absence of completion certificate issued by the Competent Authority, the benefit of abatement prescribed in the aforesaid notification cannot be extended to the appellant. At the same time, I also observe that property tax can be raised only after the building has been completed or Completion Certificate has been issued by the prescribed authority. The appellant has submitted the Property Tax Bills dated 28.01.2015 for 25 Bunglows issued by Ghuma Gram Panchayat which obviously would not have been raised before the building was completed. So to that extent, I find that it cannot be assumed that the entire differential income received during the F.Y.2015-16 & F.Y. 2016-17 was prior to issuance of Completion Certificate.

8. Another contention of the appellant is that the advances received towards booking was shown under 'Current Liabilities' as advances, and when the full payment was made, the appellant executed the sale deed and the whole amount was transferred to Sales Account in Profit & Loss Account. They have claimed that there is always a possibility that the advance was received in previous year and sale deed was executed in the next year. Hence, they are not liable to pay tax on the whole amount. They also provided reconciliation statement to bifurcate the advance received prior to and after the completion certificate for respective period and also claimed that for 3 bungalows the booking amount received was returned on cancellation of booking. In some cases, the tax was paid on advance receipt and on sale deed value but the same was returned, however, no effect was given to the same. They have also placed reliance on catena of decisions.

8.1 I have gone through reconciliation statements provided by the appellant. In **Annexure-1** they have submitted the details of the booking amount before and after the Completion Certificate vis-a-vis the amount reflected in their ST-3 Returns and the difference thereof. In **Annexure-2,** bifurcation of amount received as the booking amount before and after the Completion Certificate and Booking Cancelled. **Annexure-3**: List of Advances received before B.U. Permission. They also submitted the Ledger Account of respective buyers/members. I find that all these documents were also submitted before the adjudicating authority but the same were not considered. It is observed that the appellant is registered with the department and the entire demand has been raised based on ITR data provided by Income Tax department hence the demand is subject to reconciliation. I find that the Board vide Instruction dated 26.10.2021 has directed the field formations that while analyzing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns. The show cause notice based on the difference in ITR-TDS data and service tax returns should be issued only after proper verification of facts. Where such notices have

already been issued, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. I find that the adjudicating authority has not considered the reconciliation provided by the appellant I, therefore, find that to that extent the impugned order is a non-speaking order.

9. I, therefore, find that in the interest of justice, it would be proper to remand the matter to the adjudicating authority to consider the submissions made by the appellant. The appellant is, therefore, directed to submit the reconciliation statements and all relevant documents / details before the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions. The adjudicating authority shall decide the case afresh on merits and, accordingly, pass a reasoned order, following the principles of natural justice.

10. In view of above discussion, I remand back the impugned order passed by the adjudicating authority for examination of the documents and verify the claim of the appellant and subsequently determine the tax liability.

11. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

(अखिलेश कुमार)
आयुक्त (अपील्स)

Date: 01.2023

Attested
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Mahavir Developers, - **Appellant**
19, Jalvihar Bunglows,
Sterling City, Bopal,
Ahmedabad-380058

Additional Commissioner,
CGST & Central Excise, - **Respondent**
Ahmedabad North
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
   (For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.