



सत्यमेव जयते

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
07926305065- टेलिफैक्स 07926305136



DIN: 20221164SW0000999F32

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/32/2022-APPEAL / 51113-47
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-66/2022-23
दिनांक Date : 24-11-2022 जारी करने की तारीख Date of Issue 28.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST/D-VI/O&A/16/SANKALP/JRS/2020-21 दिनांक: 07.01.2021; issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Sankalp Organisers Pvt. Ltd.,
Sankalp House, Behind Rajpath Club,
S.G. Highway, Ahmedabad-380054

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
North, 7th Floor, B D Patel House, Nr. Sardar Patel Statue, Naranpura,
Ahmedabad - 380014

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 पूर्वोक्त 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।

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 मामलों 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 ड्यूटी क्रेडिट 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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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 अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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. Registrar 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 आदेश 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 है।

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 Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is 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 अपील 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 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

The present appeal has been filed by M/s. Sankalp Organisers Pvt. Ltd., Sankalp House, Behind Rajpath Club, S.G. Highway, Ahmedabad -- 380054 (hereinafter referred to as "the appellant") against Order-in-Original Number GST/D-VI/O&A/16/SANKALP/JRS/2020-21 dated 07.01.2021 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the fact of the case is that the appellant was holding Service Tax Registration No. AAMCS2406HSD001 and engaged in providing Residential Construction Services defined under Section 65(105)(zzzb) of the Finance Act, 1994 and were receiving advance from their customers and in some cases, the appellant sold the flats to their customers without receiving full consideration of the flats and had received the consideration after the sale of flats. During the course of audit it was found that the appellant failed to pay the Service tax at the prescribed rate on the amount received by them. Consequently, a Show Cause Notice No. ST/15-46/C-V/APPXXIV/FAR-371/RP-03/15-16 dated 15.10.2015 was issued proposing a demand of Service Tax amount of Rs. 38,42,770/- on amount of Rs. 3,27,89,546/- received by them for the period FY 2010-11 to FY 2013-14, April-2014 and July-2014, along with interest and penalty. The said notice was adjudicated by the Assistant Commissioner vide Order-in-Original No. STC/22/KM/AC/D-III/16-17 dated 23.02.2017 wherein the demand of Rs. 33,26,569/- was confirmed alongwith interest and penalty and the demand for the rest of amount was dropped as the B.U. permission for a flat was received on 24.06.2014 w.e.f. 10.04.2014, therefore payment of Rs. 42,00,000/- received on 17.04.2014 was entitled for exemption from the payment of Service Tax and the appellant was eligible for deduction of the income shown in the head VAT, Stamping Fee and refund made to party received from the flat owners. The said OIO dated 23.02.2017 was challenged before the Commissioner (Appeals), Ahmedabad and the matter was remanded back vide Order-in-Appeal No. AHM-EXCUS-002-APP-119-17-18 dated 30.10.2017 for consideration of Service Tax liability of the amount claimed by the appellant as being unsecured loan amounting of Rs. 5,71,20,202/-.

2.1 The Assistant Commissioner vide the Order-in-Original No. GST/D-VI/O&A/Sankalp/AC/RJ/18-19 dated 25.01.2019 again confirmed the demand on the ground that despite giving sufficient opportunity to the appellant, they failed to give their submissions. Again, the said OIO dated 25.01.2019 was challenged before the Commissioner (Appeals), Ahmedabad and the matter was remanded back to the adjudicating authority vide Order-in-Appeal No. AHM-EXCUS-002-APP-30-19-20 dated 28.05.2019 with a direction to pass a fresh order considering the grounds mentioned in order and giving sufficient opportunity in view of the natural justice.

Now, the adjudicating authority has passed the impugned order confirming the demand under the Order-in-Original No. GST/D-VI/O&A/16/SANKALP/JRS/2020-21 dated 07.01.2021.



3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- The appellant has submitted that they have already applied for the said matter in the scheme of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under the category of Litigation wherein Show Cause Notice involving duty pending.
- The appellant approached the SVLDRS for the following period with quantification of duty.

Year	Service Tax including EC & SHEC
2010-11	Rs. 5,12,885/-
2011-12	Rs. 5,37,200/-
2012-13	Rs. 9,36,104/-
2013-14	Rs. 16,26,685/-
2014-15 (Apr-Jun)	Rs. 2,29,896/-
Total	Rs. 38,42,770/-

- The appellant filed electronically a declaration under the said scheme of SVLDRS on the portal on 08.01.2020 for the demand towards Service Tax amounting to Rs. 38,42,770/-.
- Subsequently, the designated committee served the appellant with Form SVLDRS 2 on 29.04.2020 indicating the estimate of amount payable after consideration the concession offered under the scheme along with date of personal hearing.
- In Form SVLDRS-2A, the appellant confirmed the estimate of amount payable by giving consent on 14.05.2020.
- On the appellant consent, the designated committee issued a communication statement regarding amount payable along with a link of payment on 19.05.2020.
- The scheme offered a concession of 70% on the amount payable (Rs. 38,42,770/-) and rest 30% i.e. Rs. 11,52,831/- was to be paid. However, an amount of Rs. 2,49,495/- was already paid to the department as a part of pre-deposit for the appeal filed against OIO dated 23.02.2017 which was adjusted against the said payable.
- The appellant proceeded with payment of remaining amount of Rs. 9,03,336/- and paid the dues in full vide Challan No. 2006254183 dated 27.06.2020.



- At the end of the scheme, the Designated Committee in Form SVLDRS 4 issued to the appellant with Discharge Certificate for full and final settlement of tax dues on 08.07.2020.
- Thus, the appellant had discharged the required dues in accordance with SVLDRS and no recovery of Service Tax shall be made in respect of Show Cause Notice No. ST/15-46/C-V/APPXXIV/FAR-371/RP-03/15-16 dated 15.10.2015.
- Therefore, the impugned order required to be quashed and set aside and proceedings against same shall stand concluded.

4. Personal hearing in the case was scheduled on 23.11.2022. The appellant vide mail dated 24.11.2022 requested to decide the matter on merits and no further personal hearing is required in this case.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in this appeal is whether the impugned order passed by the adjudicating authority in the fact and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period FY 2010-11 & FY 2014-15 (Apr to Jun).

6. I find that main contention of the appellant is that they have already applied for the scheme of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under the category of Litigation and sub-category Show Cause Notice involving duty pending in respect of the Show Cause Notice No. ST/15-46/C-V/APPXXIV/FAR-371/RP-03/15-16 dated 15.10.2015 for an amount of Rs. 38,42,770/-. Subsequently, they received Form SVLDRS-4 dated 08.07.2020 issued by the Designated Committee with Discharge Certificate for full and final settlement of tax. Therefore, the impugned order required to be quashed and set aside and proceedings against same shall stand concluded.

7. On verification of the case records and Form SVLDRS-1, SVLDRS-2, SVLDRS-2A, SVLDRS-3 & SVLDRS-4 issued in the present case, I find that the adjudicating authority issued the impugned order without verification of the case records. The appellant has filed the SVLDRS-1 on 08.01.2020 vide ARN No. LD080120000714 for the Show Cause Notice No. ST/15-46/C-V/APPXXIV/FAR-371/RP-03/15-16 dated 15.10.2015 i.e. Show Cause Notice pertaining to the present case. On completion of the whole process under SVLDRS, the Designated Committee issued Form SVLDRS-4 No. L080720SV400403 dated 08.07.2020 discharging the appellant from the payment of any further duty, interest or penalty with respect to the aforesaid matter.



8. I find that as per provisions of Section 129 (1) of the Finance Act, 2019, in respect of a declaration filed under SVLDRS, which is accepted by the Designated Committee and issued discharge certificate under Section 126, the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration. The relevant provisions of Section 129 (1) of the Finance Act, 2019 is as under:

"129. (1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and—

(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;

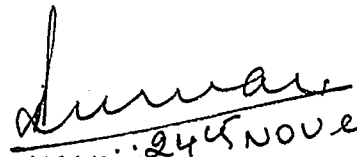
(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;

(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment."

9. Hence, with issuance of the Form SVLDRS-4, the proceeding against the appellant in respect of Show Cause Notice No. ST/15-46/C-V/APPXXIV/FAR-371/RP-03/15-16 dated 15.10.2015 is concluded and issuance of impugned order in respect of the said Show Cause Notice on 07.01.2021 confirming the demand, interest and imposing of penalty by the adjudicating authority is not legal and proper.

10. In view of the above discussion, I set aside the impugned order issued by the adjudicating authority and allow the appeal filed by the appellant.

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


24 November 2022
(Akhilesh Kumar)
Commissioner (Appeals)

Date : 24.11.2022

Attested



(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,

M/s. Sankalp Organisers Pvt. Ltd.,
Sankalp House,
Behind Rajpath Club,
S.G. Highway,
Ahmedabad – 380054

Appellant

The Assistant Commissioner,
CGST, Division-VI, Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File

6) PA file

