
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर शुल्कभवन, 7 th Floor, Central Excise Building, सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic, आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015		
☎ : 079-26305065		टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)73/A-II/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-276-17-18

दिनांक Date : 18-01-2018 जारी करने की तारीख Date of Issue 23/1/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-05/17/DKT/DC/2016-17 Dated 30.03.2017

Issued by Deputy Commr STC, Service Tax, Div-V, Ahmedabad

ध अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s. Devdip Mall Developers Pvt Ltd
Ahmedabad**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

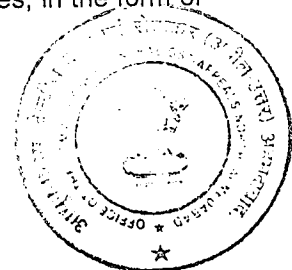
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of

a. file



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

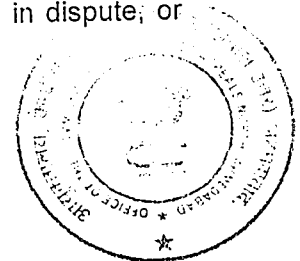
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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.



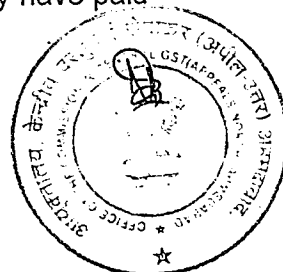
ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Devdip Malls Developers Pvt. Ltd., Dev House, Beside Rajpath Club, S.G. Highway, Ahmedabad-380059 (in short 'appellant') against Order-in-Original No.SD-05/17/DKJ/DC/2016-17 dated 30.03.2017 (in short 'impugned order') passed by the then Deputy Commissioner, Service Tax Division-V, Ahmedabad (in short 'adjudicating authority').

2. Briefly stated that the appellant obtained ST registration on 24.05.2011 for providing services of Construction of Residential and Commercial Complexes, constructed 488 residential flats and 74 shops and offices. Based on information gathered search was carried out by the DGCEI, AZU on 14.12.2012 at various premises of the appellant seized documents under proper Panchnama; called for information vide summons dated 15.07.2014, 07.11.2014, 15.05.2015 and 25.05.2015 and found that they failed to file ST-3 returns and deposit service tax payable on advances collected from the prospective buyers before obtaining Building Use(BU) permission from Ahmedabad Municipal Corporation(AMC) and in many cases it was found that they had also collected service tax from the buyers of flats and shops/offices sold even after obtaining BU permission from AMC and failed to file ST-3 returns and deposit said service tax collected to the Govt. Ex-chequer. Hence, SCN dated 14.10.2016 was issued for demanding service tax of Rs.23,33,015/- (for the period July-2010 to March-2014) alongwith interest under section 73A(3) and 75 of the Finance Act, 1994 respectively and appropriation of Rs.8,00,000/- already paid towards said demand; imposition of penalties/late fees under section 77(1), 77(2) and 70ibid. The adjudicating authority vide impugned order confirmed demand of Rs.23,33,015/- and appropriated Rs.8,00,000/- towards confirmed demand under section 73A(3) ibid, interest under section 75ibid, imposed penalty of Rs.10,000/- each under section 77(1) and 77(2)ibid and also confirmed late fee as per Rule 7C of the Service Tax Rules, 1994 read with section 70ibid.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, *inter alia*, submitted that:

- The adjudicating authority has confirmed excess amount of service tax of Rs.23,33,015/- collected by them from their customers who were not liable to pay service tax as they had booked and made entire payment after issue of BU permission. In fact, they have paid



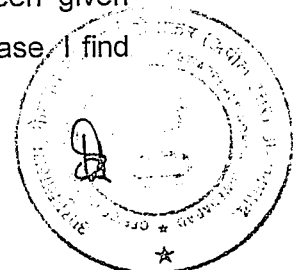
excess amount of service tax then the required amount payable. There has been no demand regarding non-payment or short payment of service tax.

- As regards service tax collected in excess, as mentioned in the SCN and the impugned order, it is to submit that said figures have been taken from the Account Ledger, however, the same has not been finalized. They are not provided with the details or explained in detail regarding such entries. They have not been provided with the opportunity to explain the entries of such excess amount of service tax.
- They have not been given opportunity of explain their case regarding excess payment of service tax during the course of investigation.
- They have filed ST-3 returns and paid late penalty imposed under section 77(1) and 77(2) of the Finance Act, 1994.

4. Personal hearing in the matter was fixed on 12.10.2017, 08.11.2017 and 01.12.2017. In reply to PH held on 01.12.2017, the appellant vide letter dated 29.11.2017(received on 30.11.2017) requested to give 3-4 week time stating that they have not received earlier PH notices and their directors are out of station. Again, the appellant was informed to appear for PH on 20.12.2017. None appeared for personal hearing nor any submission/communication is received from the appellant till date So, I am inclined to make ex-parte order in terms of provisions contained in Section 35(1) of the Central Excise Act, 1944 as made applicable to Section 84 of the Finance Act, 1994.

5. I have carefully gone through the appeal memorandum, and evidences available on records. I find that the main issue to be decided is whether the impugned order is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the subject SCN is issued by the Deputy Director, DGCEI, AZU, Ahmedabad. I find that the appellant has neither filed any defense reply/submission in the matter nor appeared for personal hearing before the adjudicating authority during the time gap of over 5 months i.e from the date of issue of subject SCN till the date of issue of the impugned order. Even in the appeal before me, the appellant has neither filed any submission nor appeared for personal hearing during the time gap of 3 months and on the contrary challenging that they have not been given natural justice even though the appellant had been given sufficient opportunity as provided in the Act to represent their case. I find



that this type of approach/attitude by the appellant is highly non co-operative and intentional delay in quasi judicial proceedings.

7. In view of the above discussion and findings, I remand the case to the adjudicating authority for considering the points raised in the present appeal and pass speaking order after following the principle of natural justice. Simultaneously, the appellant is also directed obtain copies of documentary evidences from the adjudicating authority, if the same is not available with them, and put-forth their case and co-operate the adjudicating authority with due diligence.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant and respondent stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

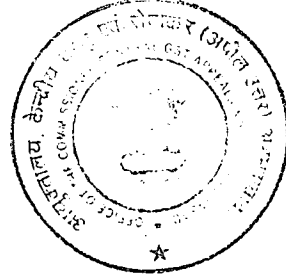
केन्द्रीय कर आयुक्त (अपील्स)

Attested:

hpl
23/01/18
(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.

BY SPEED POST TO:

M/s. Devdip Malls Developers Pvt. Ltd.,
Dev House, Beside Rajpath Club, S.G. Highway,
Ahmedabad-380059.



Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad North (RRA Section).
- (3) The Asstt. Commr, CGST Division-VI(SG Highway West),
Ahmedabad North.
- (4) The Asstt. Commr(System), CGST , Ahmedabad-South.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

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