



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
 केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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DIN-20201164SW00000BDF5

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)17/EA-2/North/Appeals/2020-21
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-31 /2020-21**
 दिनांक Date : **28.10.2020** जारी करने की तारीख Date of Issue
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **03/DC/D/2020-21/AKJ** दिनांक: **11.05.2020**, issued by
 Assistant/Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Real Strips Ltd.
Survey No. 245, Sarkehj-Bavla Higway,
Sari, Taluka: Sanand,
Dist-Ahmedabad-382220.

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 का 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 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 प्रतियां 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.

- (6) 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 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

The Deputy Commissioner of Central GST, Division-IV, Ahmedabad-North Commissionerate (hereinafter referred to as the 'Department') has filed the instant appeal on 06.07.2020, in pursuance of the Review Order No.16/2020-21 dated 29.06.2020 issued under F.No. IV/16-07/OIO/20-21-RA by the Commissioner of CGST & CX, Ahmedabad-North against the Order-in-Original No. 03/DC/D/2020-21/AKJ dated 11.05.2020 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner of Central GST, Division-IV, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority") in case of M/s. Real Strips Ltd., Survey No. 245, Sarkhej-Bavla Highway, Sari, Tal:Sanand, Dist:Ahmedabad (hereinafter referred to as the "respondent").

2. The facts of the case, in brief, are that the respondent are engaged in the manufacturing of excisable goods falling under Chapter 72202029 of the First schedule to the Central Excise Tariff Act, 1985 for which they are holding Central Excise Registration No. AABCR2893NXM001 as well as Service Tax Registration No. AABCR2893NST001.

2.1 During the course of EA 2000 Audit, certain revenue paras were raised which are re-produced below:

- (i) Revenue Para 2: Non reversal of input service credit on trading activity under Rule 6 (3) of Cenvat Credit Rules, 2004, involving an amount of Rs. 3,30,140/-.
- (ii) Revenue Para 3: Wrong availment of Cenvat credit of Service Tax on insurance premium paid to Motor Vehicles, involving an amount of Rs. 34,360/-
- (iii) Revenue Para 5: Excess Cenvat Credit taken on input service used for windmill project as per Hon'ble CESTAT order, to the tune of Rs. 11,168/-

2.2 Thereafter, on the basis of Final Audit Report No. 2302/19-20 dated 06.09.2019, a Show Cause Notice dated 17.09.2019 was issued by the Deputy Commissioner, Circle-VI, Central GST-Audit, Ahmedabad



to the respondent, vide which appropriation/recovery of the amount involved in short payment of duty or wrong availment of cenvat credit from the respondent has been proposed alongwith Interest and Penalty leviable in terms of the provisions of Central Excise Act, 1944 and rules thereof.

2.3 Thereafter, the Show Cause Notice dated 17.09.2019 has been disposed off by the adjudicating authority vide issuing the impugned order, reproduced as under:

- (i) Confirmed the demand of interest in case of the amount Rs. 3,30,140/-involved in the issue of "*Non reversal of input service credit on trading activity*". However no penalty has been imposed in the said issue.
- (ii) Confirmed the demand of Cenvat Credit of Rs.34,360/- alongwith interest involved in the issue of "*Wrong availment of Cenvat credit of Service Tax on insurance premium paid to Motor Vehicles*". Penalty of Rs. 34,360- has also been issued in term of Rule 15 (2) of the CCR read with Section 11AC of the Central Excise Act, 1944.
- (iii) Confirmed the demand of interest in case of the amount Rs. 11,168/-involved in the issue of "*Excess Cenvat Credit taken on input service used for windmill project*". However no penalty has been imposed in the said issue.

3. Being aggrieved with the impugned order, the Department preferred this appeal on the grounds that the adjudicating authority has refrained from imposing mandatory penalty for wrong availment of Cenvat Credit of Rs. 3,30,140/- under Rule 15(3) of the Cenvat Credit Rules, 2004 read with proviso to Section 78 of Finance Act, 1994 and Cenvat Credit amounting to Rs. 11,168/- under Rule 15(2) of the Cenvat Credit Rules, 2004 read with proviso to Section 11AC of the Central Excise Act, 1944.

4. The respondent in their cross-objection dated 20.07.2020 in appeal, has submitted that the SCN dated 17.09.2019 issued in the case is settled fully in terms of the issuance of SVLDRS-4 dated 12.02.2020 by the Designated Committee under Section 127 of Finance



(No.2) Act, 2019 read with Rule 9 of the SVLDRS-2019 and they have also submitted copies of Form SVLDRS-1 dated 31.12.2019 and SVLDRS-4 dated 12.02.2020. *

4.1 On going through the copies of Form SVLDRS 1 dated 31.12.2019 and Form SVLDRS-4 dated 12.02.2020 submitted by the respondent, it is observed that the respondent has submitted the declaration in Form SVLDRS 1 in respect of duties quantified as per reference no. "circle6.ap36 mail" dated 08.05.2019 and Discharge Certificate in Form SVLDRS-4 dated 12.02.2020 has been issued by the Designated Committee under Section 127 of the Finance (No.2) Act, 2019 read with Rule 9 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

4.2 Further, it is observed from the copy of Email communication dated 08.05.2019 to the respondent as well as FAR No. 2302/19-20 dated 06.09.2019 obtained from the Asst. Commissioner (Tech.), CGST, Ahmedabad North through letter F.No. IV/16-Misc/SVLDRS/19-20/341 dated 03.09.2020 that the Final Audit Report No. 2302/19-20 dated 06.09.2019 has been issued to the respondent covering the audit objections, which have been initiated and communicated through mail on date 08.05.2019. Subsequently, Show Cause Notice dated 17.09.2019 based on the said FAR was issued to the respondent answerable to the adjudicating authority. The said show cause notice dated 17.09.2019 has been adjudicated by the adjudicating authority vide impugned order. Accordingly, it is observed that the issues raised by the show cause notice and decided by the impugned order are covered under the mail communication dated 08.05.2019 from Audit Authorities to the respondent.

5. The relevant provisions contained under of Chapter V of the Finance Act (No.2), 2019 are re-produced below:

"Section 122: *This Scheme shall be applicable to the following enactments, namely:—*
(a) the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made thereunder;"



"Section 123: For the purposes of the Scheme, "tax dues" means—

- (c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019;"

"Section 127: (1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.

- (8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall issue a discharge certificate in electronic form, within thirty days of the said payment and production of proof."

"Section 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."

6. I have carefully gone through the facts of the case, grounds of appeal, submission in cross-objection made by the Respondent vide letter dated 20.07.2020.

6.1 In the instant case, it is observed that the respondent has submitted the declaration in Form SVLDRS 1 dated 31.12.2019 in terms of the provisions of Section 125 of the Finance (No.2) Act, 2019 in respect of tax dues which are linked to the audit of their records in question. In respect of the said declaration made by the respondent, the Designated Committee has also issued Discharge Certificate in Form SVLDRS-4 dated 12.02.2020 under Section 127 of the Finance (No.2) Act, 2019 read with Rule 9 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Further, it is observed that the impugned order passed by the adjudicating authority in respect of the Show Cause Notice dated 17.09.2019 which was covering the same tax dues, for



which the declaration in SVLDRS-1 form made by the respondent under the provisions of Section 125 of the Finance (No.2) Act, 2019.

6.2 Further, I find that Section 129 (1) (a) of the Finance (No.2) Act, 2019 provides that "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 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;" Accordingly, the issue covered under the impugned order passed by the adjudicating authority has been concluded as to the matter and time period-stated therein in terms of the said provisions.

7. In view of the above, I find the appeal filed by the department against the impugned order as infructuous and the appeal is accordingly dismissed.

8. The appeal filed by the department stands disposed off in above terms.

Akhil Kumar
28th October, 2020.
(Akhil Kumar)
Commissioner
(Appeals)

Attested

M.P. Sisodiya

(M.P.Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad



By Regd. Post A. D

M/s. Real Strips Ltd.,
Survey No. 245,
Sarkhej Bavla Highway,
Sari, Ta:Sanand,
Dist:Ahmedabad

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner CGST and Central Excise, Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central Excise, Division-IV, Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File



