सत्यमेव जयते

आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan,Revenue Marg,Ambawadi,Ahmedabad-380015
. ☎ 26305065-079 : टेलेफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

NATION TAX MARKET GST

DIN-20220564SW0000514189

स्पीड पोस्ट

996 To 1000

क फाइल संख्या : File No : GAPPL/COM/STP/1607/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-04/2022-23**
दिनाँक Date : **29.04.2022** जारी करने की तारीख Date of Issue : **20.05.2022**

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

ग Arising out of Order-in-Original Nos. **GST-06/Refund/01/AC/JRS/DEV/2021-22 dated 12.04.2021**, passed by the Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad-North.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Dev Procon Ltd., Dev House, Besides Rajpath Club, Sarkhej-Gandhinagar Highway, Ahmedabad-380054.

Respondent- Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad-North.

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.

आयुक्तालय, केन्द्रीय वस्तु एवं सेवाकर (अपील) अहमदाबाद OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

(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 not withstanding 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.

(6) 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 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 present appeal has been filed by M/s. Dev Procon Ltd., Dev House, Besides Rajpath Club, Sarkhej-Gandhinagar Highway, Ahmedabad-380054 (in short '***the appellant***') against the OIO No: GST-06/Refund/01/AC/JRS/DEV/2021-22 dated 12.04.2021 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad-North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant are engaged in the business of Real Estate Agent, Construction of Residential and Commercial Complex and were holding Service Tax Registration for providing said services. The appellant had filed a refund claim for an amount of Rs. 49,64,682/- on 03.03.2021, in respect of the amount paid by them towards Service Tax on the advances received against bookings, which have been subsequently cancelled. The adjudicating authority has vide impugned order, rejected the said refund claim filed by the appellant, on the basis of the findings as reproduced below:

- The Form No. SVLDRS-4 is issued under the category of "Litigation" depicting Tax dues as Rs. 55,77,793/- which pertains to ST FAR No. 2306/2018-19 dated 13.08.2019 covering the period from April, 2014 to June, 2017. Accordingly, the period under the refund claim is overlapping the said period of litigation. Hence, it is clear that the refund claim is already the part of the litigation for which the appellant has availed the benefit of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.
- The appellant had filed refund claim earlier too which was withdrawn by them vide letter dated 10.12.2019. It is concluded that SVLDRS-4 Certificate was issued only after said claimant had opted for withdrawal of their erstwhile claim.
- Section 130(1)(b) of Chapter V of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 provides that any amount paid under the scheme shall not be refunded. Further, it is specified under Section 131 that nothing contained in this scheme shall be construed as benefit or concession in other cases. It implies that the amount settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 is full and final and not subject to Refund under any circumstances. Therefore, the amount settled under the said scheme can not be reopened under any circumstances and the refund claim is contrary to the provisions of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

3. Aggrieved by the impugned order, the appellant has filed appeal on the grounds that;

- The adjudicating authority has erred in facts and in law in rejecting the claim of refund of Rs. 49,64,682/- in respect of the Service Tax involved in cancellation of bookings.
- The adjudicating authority has erred in facts and law in considering that refund claim cannot be entertained because the appellant has opted to pay tax under SVLDR Scheme 2019 and the Form No. SVLDRS-4 is issued under the category of litigation.
- The adjudicating authority has erred in facts and law in keeping strong reliance on Section 130 and Section 131 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 whereas the same is not applicable in this case.
- The adjudicating authority has erred in ignoring all material evidence on record including the earlier refund order passed in the case of appellant for the same facts of the case.

4. Personal hearing in the matter was held on 22.03.2022 through virtual mode. Shri Nitin D. Thakker, Advocate, and Shri Vijay N. Thakkar, Consultant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum as well as in the additional written submission made through e-mail on 22.03.2022.

4.1 The appellant made an additional submission dated 22.03.2022, as reproduced below:

- The adjudicating authority failed to appreciate the fact that the appellant have discharged their Service Tax liability for the year 2010 to 2014 during the course of investigation initiated by DGCEI, Ahmedabad Zonal Unit (Now DGGI) and the same stood appropriated in the OIO No. AHM-SVTAX-000-COM-002-16-17 dated 28.07.2016 issued by the Hon'ble Commissioner. Accordingly, the only amount remained unpaid was penalty of Rs. 3,78,71,302/- and disputing the said penalty imposed on them under Section 78 of the Finance Act, 1994, the appellant had filed an appeal before the Hon'ble CESTAT, Ahmedabad registered as Case No. ST/12054/2016.
- The appellant had filed SVLDRS-1 declaration for waiver of penalty and interest which remained unpaid. SVLDRS, 2019 was notified for reducing litigation and allowing relief to the tax payers towards "Amount in Arrears" and "Tax Dues" and complete waiver of Penalty and Interest. In the case of appellant, it has no tax dues as the amount was already paid and appropriated by the Hon'ble Commissioner in Order-in-Original. The appellant filed an appeal against the unpaid penalty. Therefore, the perusal of the definition of amount in arrears and tax dues clearly suggests that the case of the appellant is not falling under any of these terms.

- In the case of the appellant, no tax was remained to be paid under SVLDRS, 2019, the appeal was filed in CESTAT for penalty imposed in the Order-in-Original by the Hon'ble Commissioner. In this case, the applicable provisions for claiming relief will be governed according to Section 142(1)(b) relief available in the case where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty.

- In the present case, there was no tax dues/arrears at the time of submitting SVLDRS-1, however it was arrears in call as the tax paid was already appropriated in OIO and appeal was filed in CESTAT for penalty only. The combined reading of Section 121, 123 and CBEC's Circular No. 1071/4/2019-CX.8 dated 27.08.2019 and Circular No. 1072/05/2019-CX dated 25.09.2019, clearly grants relief or complete waiver of penalty under SVLDRS, 2019. Accordingly, the appellant has filed SVLDRS-1 was filed for waiver of penalty and interest and not for tax dues/arrears of tax, as tax paid by the appellant was stood appropriated in the OIO itself and was not in dispute by the appellant in the CESTAT. From the SVLDRS-4 issued, it can be seen that they were not required to discharge any amount for the SVLDRS-1 filed and they got full waiver of penalty only.

- The amount claimed as Refund was not forming part of amount paid under Section 124 of the Finance Act, 2019. Various buyers of the appellant cancelled the booking of units at different point of time to whom they have paid back their entire booking amount alongwith Service Tax. Accordingly, the appellant has filed refund claims enclosing various documents. Neither their refund claim was hit by bar of unjust enrichment nor the adjudicating authority has disputed merit of the refund claim. The Service Tax so refunded to the buyer were part of the Service Tax which has been paid by the appellant during the investigation by DGCEI and was subsequently appropriated as per OIO and not the amount paid by availing relief under Section 124 of SVLDRS, 2019. As the appellant have not paid any amount under SVLDRS, 2019, as evident from SVLDR-4, the reliance on Section 130 and 131 by the adjudicating authority is factually and legally misplaced.

5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as in the submissions made at the time of personal hearing and the records submitted by the appellant. It is observed that the issue to be decided under the present appeal is as under:

i) Whether the refund claim for an amount of Rs. 49,64,682/- rejected by the adjudicating authority in the facts and circumstances of the case is legal & proper or otherwise?

6. As per the facts available on record, it is observed that the appellant has filed claim of refund amounting to Rs. 49,64,682/- on 03.03.2021, being the amount paid by them towards Service Tax on the amounts received from the buyers at the relevant time i.e. F.Y. 2013-14 and F.Y. 2015-16 and such bookings have been subsequently cancelled by the respective buyers during F.Y. 2017-18, 2018-19 and 2019-20. The adjudicating authority has denied the claim and has observed that SVLDRS-4 was issued in case of the appellant under the category of "Litigation" depicting Tax dues as Rs. 55,77,793/- which pertained to ST FAR No. 2306/2018-19 dated 13.08.2019 covering the period from 04/2014 to 06/2017 and the period of the refund claim filed by the appellant was also overlapping the said period of litigation.

6.1 In the present case, it is observed that the period covered under the audit is from April, 2014 to June, 2017, whereas the refund claim also pertained to F. Y. 2013-14, which is not covered under the said audit period, and the same has been rejected by the adjudicating authority only on the contention that the same was overlapping the period of litigation as per audit. Accordingly, I find that the adjudicating authority has not examined the refund claim in its totality and rejected the same without appreciating the facts available on record.

6.2 Further, it is observed that the adjudicating authority contended that "Section 130(1)(b) of Chapter V of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 provides that any amount paid under the scheme shall not be refunded. Further, it is specified under Section 131 that nothing contained in this scheme shall be construed as benefit or concession in other cases. It implies that the amount settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 is full and final and not subject to Refund under any circumstances. Therefore, the amount settled under the said scheme can not be reopened under any circumstances and the refund claim is contrary to the provisions of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019".

6.3 On going through the copy of FAR No. 2306/2018-19 dated 13.08.2019 as well as Form No. SVLDRS-4 dated 16.10.2019 depicting Tax dues as Rs. 55,77,793/-, it is observed that the said declaration is filed under the category of "Investigation, Enquiry or Audit" and sub-category "audit" and not under the category of "Litigation" as contended by the adjudicating authority. Further, I find as per the facts available on

record that no amount of Service Tax was payable by the appellant, at the time of filing the declaration in Form SVLDRS1, leviable on the advances received from different buyers, in respect of their booking made by them at the relevant time. As per SVLDRS-4 dated 16.10.2019, it is also observed that the estimated amount payable is also shown as Zero Rupees only.

6.4 Further, as per the facts available on record, it is also observed that another declaration in Form SVLDRS-1 dated 30.12.2019 (Form No. SVLDRS-4 dated 31.12.2019) filed by the appellant, under the category of "Litigation" depicting Tax dues of Rs. 3,78,67,302/- which pertained to OIO No. AHM-SVTAX-000-COM-002/16-17 dated 28.07.2016. I find as per the copy of the said OIO dated 28.07.2016 that Service Tax amounting to total Rs. 3,78,67,302/- has already been paid by the appellant, before issuance of the said order which have been appropriated vide the said order towards the demand of Service Tax confirmed therein and accordingly, no amount was due/payable towards Service Tax, at the time of filing said declaration under SVLDRS Scheme. However, the adjudicating authority appears to have not considered this aspect.

6.5 The relevant provisions of Section 129, Section 130 and Section 131 of Chapter V of Finance Act (No.2) 2019 are as under:

*"**129. (1)** Every discharge certificate issued under Section 127 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."

*"**130. (1)** Any amount paid under this Scheme,—*

(a) shall not be paid through the input tax credit account under the indirect tax enactment or any other Act;

(b) shall not be refundable under any circumstances;

(c) shall not, under the indirect tax enactment or under any other Act,—

(i) be taken as input tax credit; or

(ii) entitle any person to take input tax credit, as a recipient, of the excisable goods or taxable services, with respect to the matter and time period covered in the declaration.

(2) In case any predeposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded".

*"**131.** For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (1) of section 124, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to the matter and time period to which the declaration has been made".*

6.6 In the present case, as per the facts on records, it is observed that the appellant has filed refund claim for Service Tax refund in terms of the provisions of Section 142(5) of CGST Act, 2017 and Rule 6(3) of Service Tax Rules, 1994, as the Service Tax was paid on the advances received from the buyers as 'booking amount' in respect of the bookings made during the period of Pre-GST and such bookings have been subsequently cancelled during the period, after 01.07.2017 i.e. introduction of GST. The relevant provisions of Section 142(5) of CGST Act, 2017 and Rule 6(3) of Service Tax Rules, 1994 are reproduced below:

" Sec. 142 (5)- Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944)".

" Rule 6(3)-Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, [or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract], the assessee may take the credit of such excess service tax paid by him, if the assessee.- (a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or] (b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued".

6.7 In the present case, it is observed that the issue as regards the leviability and payment of Service Tax by the appellant in respect of the advances received by the appellant at the relevant time, has been finally concluded in terms of the discharge certificates in Form SVLDRS-4 issued in the matter. Further, as per the facts on record, I find that the instance of refund has arisen on account of the cancellation of booking by the respective buyers, during the period after introduction of GST. It is pertinent to mention that the issue of leviability and payment of Service Tax on the advance amount has neither been disputed by the appellant nor requested to re-open the same. As per the provisions of the SVLDRS Scheme, 2019, I find it clear in terms of the provisions of Section 129 of Finance Act (No.2) 2019 that any amount paid under the scheme is conclusive as to the matter and time period stated under the respective declaration filed under the scheme.

6.8 In view of the above discussion, I find that the refund claim in the present case has been filed by the appellant in terms of the provisions of Section 142(5) of CGST Act, 2017 and Rule 6(3) of Service Tax Rules, 1994, on account of the cancellation of the booking by the buyers at a later stage i.e. non-provision of service and such refund claim has not been claimed, either challenging or disputing the issue/matter which has been settled under the SVLDRS Scheme, 2019. Accordingly, I find that the provisions of Section 130 and Section 131 of Chapter V of SVLDRS Scheme, 2019, as contended by the adjudicating authority, are not applicable in the present case. Hence, the contention of the adjudicating authority to that extent and, accordingly, rejection of the refund claim filed by the appellant is not legally sustainable.

7. Further, it is observed that the adjudicating authority has also contended that the appellant had filed refund claim earlier too which was withdrawn by them vide letter dated 10.12.2019 and he also concluded that SVLDRS-4 Certificate was issued only after the withdrawal of the said refund claim by the appellant. As per the facts available on record, I find that the adjudicating authority has neither produced any relevant documentary evidences in support of the said conclusion nor given any findings, as to how and under which provisions, the withdrawal of the said refund claim was relevant or required for issuance of the discharge certificate in Form SVLDRS-4 by the Competent Authority in respect of the declaration filed by the appellant under the SVLDRS scheme. Accordingly, in absence of any documentary evidences or justification, I find that the said contention of the adjudicating authority is not legally sustainable.

8. In the present case, it is also observed that as per the contention of the appellant that a refund claim for an amount of Rs. 15,70,428/- filed by the appellant, on account of the similar facts and period, has been allowed by the adjudicating authority. As regards the said contention, I find as per the facts available on record that the same adjudicating authority has allowed the said refund claim filed on the similar grounds by the appellant on 01.07.2020, vide OIO issued from F.No. GST-06/04-22/R-Dev/2020-21 dated 24.07.2020 and also, no further appeal appears to have been filed by the department against the said order. Hence, there appears to be a contradiction in approach of the adjudicating authority and there appears no justification for taking contrary view in the matter in the case of same party i.e. the appellant. I find that the decision given by the adjudicating authority in the present case, is not legally sustainable as per the principles of law, being contrary to the stand already taken by him in the earlier case of the appellant, in facts which appears to be similar.

9. Further, on going through the impugned order, it is observed that the adjudicating authority has not raised any dispute as regards the merit of the refund claim filed by the appellant in the present case. I also find that the adjudicating authority has not given any findings in the impugned order whether the factual details submitted by the appellant in support of their refund claim have been verified or otherwise. Accordingly, I find that it would be proper to remand back the present case to the adjudicating authority for the purpose of verification of the factual details submitted by the appellant alongwith the refund claim, to confirm the genuineness of the same, and accordingly, to decide it afresh, following the principles of natural justice.

10. On careful consideration of the relevant legal provisions and submissions made by the appellant, I pass the Order as below:

(1) As discussed in Para-6.8, Para-7, Para-8 and Para-9 above, I set aside the impugned order and remand back the same to the adjudicating authority for the purpose of verification of the factual details submitted by the appellant alongwith the refund claim and accordingly, to decide it afresh, following the principles of natural justice.

11. अपीलकर्ताद्वारादर्जकीगईअपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।
The appeal filed by the appellant stand disposed off in above terms.

29th April, 2022.

(अखिलेश कुमार)
आयुक्त (अपील्स)

Date: 29.4.2022

Attested

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

By RPAD/SPEED POST

To,
M/s. Dev Procon Ltd., - **Appellant**
Dev House,
Besides Rajpath Club,
Sarkhej-Gandhinagar Highway,
Ahmedabad-380054

Assistant Commissioner, - **Respondent**
CGST, Division-VI,
Commissionerate: 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. Guard File.
5. P.A. File