



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065

- टेलिफैक्स 07926305136



DIN : 20230364SW0000000E69

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3133,3134/2022 *J9152 -57*
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-180 to 181/2022-23
दिनांक Date : 10-03-2023 जारी करने की तारीख Date of Issue 15.03.2023.
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 37/CGST/Ahmd-South/JC/NB/2021-22 दिनांक: 25.03.2022 passed by
Joint Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. Shri Ankit Shah, Director
M/s Devdiya Reality Pvt Ltd
Iscon House, Behind Rembrandt Building, C.G. Road,
Opposite Associate Petrol Pump, Navrangpura, Ahmedabad – 380009
2. Shri Sanjay J. Patel, Director
M/s Devdiya Reality Pvt Ltd
Iscon House, Behind Rembrandt Building, C.G. Road,
Opposite Associate Petrol Pump, 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 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 हानिकार खाने 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 प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीष 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 होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

24th सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

- (lxxxviii) amount determined under Section 11 D;
(lxxxix) amount of erroneous Cenvat Credit taken;
(xc) 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."

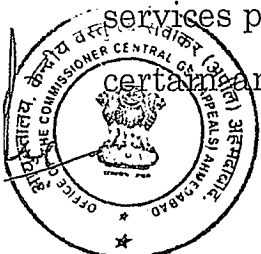


ORDER-IN-APPEAL

Two appeals have been filed by the below mentioned appellants (hereinafter referred to as Appellant Nos.1 and 2, as per details given in table below) against the Order in Original No. 37/CGST/Ahmd-South/JC/NB/2021-22 dated 25-03-2022 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

S.No.	Name and address of the appellant	Appeal No.
1	Shri Ankit Shah, Director, M/s. Devdiya Reality Pvt. Ltd., Iscon House, Behind Rembrandt Building, C.G.Road, Opposite Associate Petrol Pump, Navrangpura, Ahmedabad - 380009. Appellant No. 1	GAPPL/COM/STP/3133/2022
2	Shri Sanjay J. Patel, Director M/s. Devdiya Reality Pvt. Ltd., Iscon House, Behind Rembrandt Building, C.G.Road, Opposite Associate Petrol Pump, Navrangpura, Ahmedabad - 380009. Appellant No. 2	GAPPL/COM/STP/3134/2022

2. Briefly stated, the facts of the case are that the Appellant Nos.1 and 2 are Directors of M/s. Devdiya Reality Pvt. Ltd. Ahmedabad (hereinafter referred to as DRPL), who are engaged in the business of real estate and undertake selling of plot/units to their customers. The evidences unearthed in the course of search and seizure proceedings conducted by officers of DGIT (Inv), Unit-13, Income Tax, Ahmedabad were shared by the Central Economic Intelligence Bureau (CEIB) with the Directorate General of Goods and Service Tax Intelligence (DGGI), Ahmedabad. Accordingly, inquiry was initiated by the officers of DGGI, Ahmedabad against DRPL. The investigation revealed that DRPL had evaded service tax amounting to Rs.1,33,78,570/- by suppressing the value of taxable services provided by them. The investigation also revealed that recovery of certain amount of the taxable value in cash and not considering the cash



receipts as well as the value recorded in the books of accounts of DRPL, not getting the said firm registered under Service Tax, not filing ST-3 returns and evasion of service tax was under the directions of Appellant Nos.1 and 2.

2.1 Therefore, DRPL were issued Show Cause Notice bearing No. DGGI/AZU/Gr.A/36-148/2019-20 dated 11.11.2019 proposing to recover the service tax amounting to Rs.1,33,78,570/- along with interest. Penalty was also proposed to be imposed on DRPL under Sections 76, 77 and 78 of the Finance Act, 1994. Appellant Nos.1 and 2 were called upon vide the said SCN to show cause as to why penalty should not be imposed upon them under Section 78A of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein, the demand of service tax was confirmed against DRPL along with interest and penalty under Sections 77 and 78 of the Finance Act, 1994. Penalty amounting to Rs.1,00,000/- each, was imposed on Appellants No.1 and 2.

4. Being aggrieved with the impugned order, Appellant Nos.1 and 2 have filed the present appeals on 21.10.2022 challenging, on merits, the imposition of penalty under Section 78A of the Finance Act, 1994.

5. Personal Hearing in the case was held on 22.02.2023. Shri Rashmin Vaja, Chartered Accountant, appeared on behalf of appellants for the hearing. He stated that they had mentioned about pre-deposit being made regarding the penalty imposed on the Directors in the main appeal memorandum as well as the fact that they were challenging the penalty imposed against the Directors of the firm in the main appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made during the personal hearing and the material available on records. It is observed from the records that the present appeal was filed by the appellant on 21.10.2022 against the



impugned order dated 25.03.2022, which the appellants claimed to have received on 04.04.2022. It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

6.1 In the instant case, the impugned order is dated 25.03.2022 and the appellants have admittedly received it on 04.04.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 04.06.2022. The further period of one month, which the Commissioner (Appeals) is empowered to allow for filing appeal also ended on 04.07.2022.

6.2 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

6.3 The appellants were required to file the appeal on or before 04.06.2022 i.e. two months computed from 04.04.2022. Further, the condonable period of one month, in terms of Section 85 (3A) of the Finance Act, 1994 ended on 04.07.2022. The present appeal filed on 21.10.2022, is, therefore, clearly barred by limitation. Since the appeals in the instant case have been filed beyond this further period of one month, this authority is not empowered to condone delay in filing of appeal beyond the



period of one months as per the proviso to Section 85 (3A) of the Finance Act, 1994.

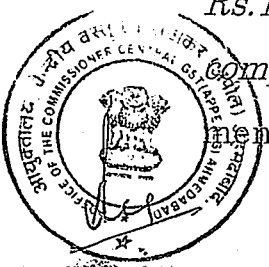
6.4 My above view finds support from the judgment of the Hon'ble Tribunal, Ahmedabad in the case of Zenith Rubber Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – 2014 (12) TMI 1215 – CESTAT, Ahmedabad. In the said case, the Hon'ble Tribunal had held that :

“5. It is clear from the above provisions of Section 85(3A) of the Finance Act, 1994 that Commissioner (Appeals) is empowered to condone the delay for a further period of one month. The Hon'ble Supreme Court in the case of Singh Enterprises (supra) held that Commissioner (Appeals) has no power to condone the delay beyond the prescribed period. In our considered view, Commissioner (Appeals) rightly rejected the appeal following the statutory provisions of the Act. So, we do not find any reasons to interfere in the impugned order. Accordingly, we reject the appeal filed by the appellant.”

7. The Appellants have, in the course of the personal hearing, contended that they had mentioned about the pre-deposit made by them in the main appeal filed by DRPL and that it was also mentioned in the appeal memorandum of DRPL that the penalty imposed on the Directors of the firms was also being challenged. It is observed that appeals filed before the Commissioner (Appeals) in service tax matters are filed in terms of Section 85 of the Finance Act, 1994. The text of Section 85 (1) of the Finance Act, 1994 is reproduced below :

“Any person aggrieved by any decision of order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).”

7.1 In view of the contention of the appellants, I have perused Appeal No. GAPPL/COM/STP/2347/2022 filed by DRPL on 03.06.2022. In the said appeal, against the name and address of the appellant, it is mentioned as “*M/s.Devadiya Reality Private Limited, Iscon House, B/H Remtrandt Building, CG Road, Opp. Associate Petrol Pump, Navrangpura, Ahmedabad, 380009.*” Further, at Serial No.6 of the Form ST-4 in respect of payment of pre-deposit, it has been stated that “*Pre-deposit of Rs.15,000/- (Rs.7,500 each towards personal penalty on 2 directors of the Company).*” However, in the appeal filed by DRPL in Form ST-4, there is no mention of the names of Appellant Nos.1 and 2. It is clear that the appeal



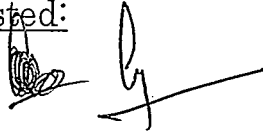
filed on 03.06.2022 is only filed by DRPL and not by Appellant Nos.1 and 2. Mere mentioning of the payment of pre-deposit, by the Directors, in the appeal filed by DRPL would not lead to the conclusion that the appeal filed by DRPL also includes appeal filed Appellant Nos.1 and 2 and neither can the appeal filed by DRPL said to include the appeals by Appellant Nos.1 and 2. Therefore, I am of the considered view that the contention of Appellant Nos.1 and 2 are devoid of merit.

8. In view of the facts discussed herein above and considering the judgment of the Hon'ble Tribunal, supra, I reject the appeals filed by the appellants on the grounds of limitation.

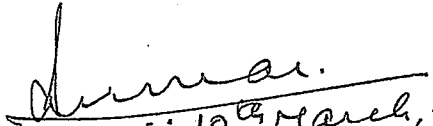
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellants stands disposed of in above terms.

Attested:



(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ)
CGST Appeals, Ahmedabad.


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 10-03-2023.



BY RPAD / SPEED POST

To

Shri Ankit Shah, Director,
M/s. Devdiya Reality Pvt. Ltd.,
Iscon House,
Behind Rembrandt Building,
C.G.Road,
Opposite Associate Petrol Pump,
Navrangpura, Ahmedabad - 380009.

Appellant No.1

Shri Sanjay J. Patel, Director
M/s. Devdiya Reality Pvt. Ltd.,
Iscon House,
Behind Rembrandt Building,
C.G.Road,
Opposite Associate Petrol Pump,
Navrangpura, Ahmedabad - 380009.

Appellant No.2

The Joint Commissioner,
CGST,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
- ~~4. Guard File.~~
5. P.A. File.



